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10-4-82
Vol. 47 No 192
43659-43934

Federal Register

Monday
October 4, 1982

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Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 4980 of September 30, 1982

Staged Reduction of Rates of Duty on Certain Products To Carry Out a Trade Agreement

By the President of the United States of America

A Proclamation

1. Pursuant to section 124(a) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2134(a)), I determined that certain existing duties of the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of the Trade Act would be promoted by entering into the trade agreement identified in the third recital of this Proclamation.

2. Sections 131(a), 132, 133, 134, 135, and 161(b) of the Trade Act (19 U.S.C. 2151(a), 2152, 2153, 2154, 2155, and 2211(b)) have been complied with.

3. On December 31, 1981, pursuant to section 124 of the Trade Act and to section 6(b) of the Taiwan Relations Act (22 U.S.C. 3305(b)), my duly empowered representative entered into a trade agreement with the entity recognized by the President in section 1–204 of Executive Order 12143 of June 22, 1979 (22 U.S.C. 3301 note). The trade agreement provides that the rates of duty on certain products would be modified as hereinafter proclaimed and as provided for in Annex I to this proclamation, in exchange for certain measures which will benefit United States interests.

4. Pursuant to the Trade Act, I determine that the modifications or continuance of existing duties hereinafter proclaimed are required or appropriate to carry out the trade agreement identified in the third recital of this proclamation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes, including but not limited to sections 124 and 604 of the Trade Act (19 U.S.C. 2134 and 2483), do proclaim that:

(1) The column 1 rates of duty applicable to articles provided for in items 141.78, 725.32, 734.10, 734.15, 734.87, 735.09, 735.20 and 772.35 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) are modified as provided in Annex I to this proclamation.

(2) Annex III to Presidential Proclamation 4707 of December 11, 1979, and Annex III of Presidential Proclamation 4768 of June 28, 1980, are superseded to the extent inconsistent with this proclamation.

(3) Whenever the column 1 rate of duty in the TSUS for any item specified in Annex I to this proclamation is reduced to the same level as, or to a lower level than, the corresponding rate of duty in the column entitled "LDDC" in the TSUS for such item, the rate of duty in the column entitled "LDDC" for such item shall be deleted from the TSUS.

(4) Each of the modifications made by this proclamation shall be effective as to articles entered, or withdrawn from warehouse for consumption, on and after September 30, 1982.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of Sept. in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

ANNEX I

STAGED RATE MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

Note:

Each rate in the following table, opposite the number of an item in the Tariff Schedules of the United States (TSUS) identified therein, is inserted in column numbered 1 in such item, effective for articles provided for therein which are entered, or withdrawn from warehouse for consumption, on and after the date at the head of the column in which such rate is set forth and such rate shall be superseded by the rate, if any, for that item in the immediately following column, effective for articles which are entered, or withdrawn from warehouse for consumption, on and after the date at the head of such latter column.

TSUS Item Number	Rates of duty effective with respect to articles entered on and after—					
	September 30, 1982	January 1, 1983	January 1, 1984	January 1, 1985	January 1, 1986	January 1, 1987
141.78	8.7% ad val.	8.4% ad val.	8.1% ad val.	7.8% ad val.	7.5% ad val.	7.2% ad val.
725.32	6.6% ad val.	6.3% ad val.	5.9% ad val.	5.5% ad val.	5.2% ad val.	4.8% ad val.
734.10	4% ad val.	4% ad val.	4% ad val.	4% ad val.	4% ad val.	4% ad val.
734.15	6.72% ad val.	6.32% ad val.	5.92% ad val.	5.52% ad val.	5.04% ad val.	4.64% ad val.
734.87	4.2% ad val.	4.2% ad val.	4.2% ad val.	4.2% ad val.	4.2% ad val.	4.2% ad val.
735.09	7.84% ad val.	7.2% ad val.	6.64% ad val.	6% ad val.	5.44% ad val.	4.8% ad val.
735.20	6.72% ad val.	6.32% ad val.	5.92% ad val.	5.52% ad val.	5.04% ad val.	4.64% ad val.
772.35	4.24% ad val.	4.08% ad val.	3.92% ad val.	3.76% ad val.	3.52% ad val.	3.36% ad val.

[FR Doc. 82-27407
Filed 10-01-82; 11:27 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

Increase in Fees and Charges at Destination Markets

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to revise the schedule of fees and charges for inspection of fresh fruits, vegetables and other products at destination markets to reflect increased costs associated with the program.

EFFECTIVE DATE: 12:01 a.m. October 3, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Castille, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–5870.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. It will not result in an annual effect on the economy of $100 million or more. If the increased fees for inspection of fresh fruits, vegetables and other special products were passed on by the wholesalers, the increase would represent less than 0.004 cents per package based on a carload of 1,000 packages of fresh produce, and this is not considered to be a major increase in costs or price for consumers or individual industries. Likewise, this rule should have no impact on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The use of grades and inspection and certification services increases the efficiency in the marketing system and facilitates orderly marketing of agricultural products.

Eddie Kimbrell, Deputy Administrator, Agricultural Marketing Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it represents, on a cost-per-unit graded basis, only a small increase in the costs currently borne by those entities untilizing the voluntary inspection and certification services.

It is found that good cause exists for making this final rule effective October 3, 1982, because the present fees are not adequate to recover the costs of providing the different types of services. The need for the increase and the amount thereof are dependent upon factors beyond the control of the Agricultural Marketing Service.

The fees and charges for services at destination markets rendered to the fresh fruit and vegetable industry are amended to reflect the costs associated with the program. Such services are authorized under the Agricultural Marketing Act of 1946, Sec. 203(h), which requires that fees be reasonable and, as nearly as possible, cover the costs of rendering the services. No appropriated funds are provided to the agency to offset the costs of rendering the services. Therefore, such costs must be recovered in full through user fees charged to the applicants requesting the services.

The following table compares current fees and charges for fresh fruit and vegetable inspection with the new schedule.

	Current	New
(1) Quality and condition inspections:		
(i) Over one-half carlot to full carlot of one product	$38.00	$42.00
(ii) One-half carlot or less of one product	32.00	35.00
(iii) Full carlot of more than one product—maximum fee	76.00	84.00
(2) Condition inspection only:		
(i) Over one-half carlot to full carlot one product	32.00	35.00
(ii) One-half carlot or less of one product	30.00	33.00
(iii) Full carlot of more than one product—maximum fee	64.00	70.00
(3) The base fee for (shelled), pecans and other nuts per ton shall be	1.10	1.20
Minimum fee per lot	15.00	20.00
Farmers Stock Peanuts (Unshelled) per ton	2.50	3.50
(4) Hourly rate	19.00	21.00
(5) Small package fee:		
1 to 25 packages inclusive	5.00	5.50
26 to 50 packages inclusive	7.00	7.75
51 to 150 packages inclusive	10.00	11.00
151 to ½ customary carlot	14.00	15.50
(6) Hourly rate for overtime or equivalent work in addition to regular commercial lot or hourly fees specified	9.50	10.60

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables and other products, Agricultural commodities, Food grades and standards.

Accordingly, the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and other products (7 CFR 51.38) are revised to read as follows:

§ 51.38 Basis for charges.[3]

(a) The fee for each lot of products inspected by an inspector acting exclusively for the Department, except for peanuts, pecans, or other nuts, shall be on the following basis.

(1) Quality and condition inspections:

(i) $42 for each over one-half carlot equivalent of an individual product up to a full carlot.

(ii) $35 for each half-carlot equivalent or less of an individual product.

(iii) $84 maximum for inspection of each carlot equivalent when more than one kind of product is involved.

(2) Condition inspection only:

(i) $35 for each over one-half carlot equivalent of an individual product up to a full carlot.

(ii) $33 for each half-carlot equivalent or less of an individual product.

(iii) $70 maximum for inspection of each carlot equivalent when more than one kind of product is involved.

(b) The base fee for peanuts (shelled), pecans, or other nuts shall be $1.20 per ton: *Provided,* That the minimum fee shall be $20 per lot, the different grades and varieties of peanuts shall be considered separate lots, and the fee for Farmers' Stock peanuts (unshelled) shall be $3.50 per ton.

(c) When inspections are made and the products inspected cannot be readily calculated in terms of carlots, or when

[3] Carlot equivalent shall be based on the customary quantity of a product loaded in common rail cars.

the services rendered are such that a charge on the carlot or other unit basis would be inadequate or inequitable, charges for inspections may be based on the time consumed by the inspector in connection with such inspections, computed at the rate of $21.00 per hour.

(d) Notwithstanding the fee rates prescribed in the preceding paragraphs, fee and charges for the inspection of small lots where detailed reports of inspections are not normally required, [4] the following rates may be applied:

1 to 25 packages inclusive	$5.50
26 to 50 packages inclusive	7.75
51 to 150 packages inclusive	11.00
151 to ½ customary carlot equivalent	15.50

(e) Whenever inspections are performed at the request of the applicant during periods which are outside the inspector's regular scheduled work week, a charge for overtime or holiday work shall be made at the rate of $10.60 per hour or portion thereof in addition to the regular commercial lot or hourly fees specified in this subpart. Holidays are those specified in Title 5 U.S.C., Section 6103(a).

Notice of proposed rule making, public procedure thereon, and the postponement of the effective time of this action later than October 3, 1982, (5 U.S.C. 533) are impracticable, unnecessary, and contrary to the public interest in that (1) the Agricultural Marketing Act of 1946 provides that the fees charged shall be reasonable and, as nearly as possible, cover the cost of the service rendered, (2) the increases in fee rates set forth herein are necessary to more nearly cover such cost including, but not limited to, Federal employees salary adjustment; (3) it is imperative that these increases in fee rates become effective in time to cover such increased costs; and (4) additional time is not required by users of the inspection service to comply with this amendment.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624.))

Done at Washington, D.C. on September 30, 1982

William T. Manley,

Deputy Administrator Marketing Program Operations.

[FR Doc. 82-27297 Filed 9-30-82; 12:12 pm]

BILLING CODE 3410-02-M

[4] For example, the inspection of small lots for export to Canada or delivery to private and public institutions.

7 CFR Part 910

[Lemon Regulation 379, Lemon Regulation 378, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period October 3–9, 1982, and increases the quantity of lemons that may be shipped during the period Sept. 26–Oct. 2, 1982. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: The regulation becomes effective October 3, 1982, and the amendment is effective for the period September 26—October 2, 1982.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. 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 Lemon 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 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met again publicly on September 28, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is moderate.

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 and amendment are 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, and the amendment relieves restrictions on the handling of lemons. 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.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. Section 910.679 is added as follows:

§ 910.679 Lemon Regulation 379.

The quantity of lemons grown in California and Arizona which may be handled during the period October 3, 1982, through October 9, 1982, is established at 230,535 cartons.

2. Section 910.678 Lemon Regulation 378 (47 FR 42097) is revised to read as follows:

§ 910.678 Lemon Regulation 378.

The quantity of lemons grown in California and Arizona which may be handled during the period September 26, 1982, through October 2, 1982, is established at 240,000 cartons.

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

Dated: September 30, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-27296 Filed 9-30-82; 12:13 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 314

Property Management Regulation—Mortgages

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's property management regulations concerning mortgages. It provides for the waiver by the Assistant Secretary of the prohibition against placing mortgages on property which has been financed by an EDA grant. These requirements for waiver are consistent with EDA regulations concerning a waiver prior to the award of an EDA grant. As this regulation is now written, a grantee may if certain conditions are met, be allowed, at the beginning of the grant to place a mortgage on grant property. The amendment is needed because a grantee sometimes needs to place a mortgage on EDA funded property after the grant has been made.

DATES: Effective date: October 4, 1982. Comments by: December 3, 1982.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Charles W. Coss, Director, Office of Public Works, Economic Development Administration, 14th and Constitution Ave., NW., Room 7019, Washington, D.C. 20230, (202) 377–5265.

SUPPLEMENTARY INFORMATION: EDA is amending its property management regulation at 13 CFR Part 314 concerning mortgages in order to fulfill a need not contemplated when the regulations were originally drafted.

This amendment allows the Assistant Secretary to waive the prohibition against placing mortgages on property which has been financed by an EDA public work grant, if certain conditions are met. These conditions for waiver are the same as those which must be met by EDA applicants who seek to place a mortgage on the property which is to be financed by an EDA public works grant. The conditions are as follows: (1) The inability of the grantee to otherwise obtain financing; (2) EDA cannot (in the best interest of the government), make a loan; (3) the grantee's strength of ties with the community; (4) requirements of the private lender which call for placing a lien on the project; (5) expectation of repayment of the private loan; and (6) if possible, an agreement between the grantee and the private lender that if foreclosure occurs, the project will continue to be used for public purposes.

Because this rule relates to EDA's public works program, it is exempt from the notice and comment procedures described in Section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, while the rule will become effective upon publication in interim form, the public will be given an opportunity to comment before it is published in final form.

In accordance with Section 3(c)(3) of Executive Order No. 12291, this rulemaking has been submitted to the Director of the Office of Management and Budget. Since this is not a "major rule", a Regulatory Impact Analysis is not required.

In addition, there are no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

It has been determined by the General Counsel of the Department of Commerce that this rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 314

Economic Development Administration, Economic development, Grant programs—economic development, Government property management, and Surplus government property.

Accordingly, EDA amends 13 CFR Part 314 as follows:

PART 314—PROPERTY MANAGEMENT

13 CFR 314.5 is amended by adding a new paragraph (b) to read as follows:

§ 314.5 Mortgages.

* * * * *

(b) The Assistant Secretary may, after a grant is in place, waive the provisions of this paragraph when he determines all of the following that:

(1) The grantee because of its nature and makeup, without a loan from a private lender, does not have the funds to further operate this project;

(2) It is in the best interest of the government not to provide a Public Works loan to the grantee;

(3) The project is closely allied with the community in which it is located, making it unlikely that foreclosure by a private lender would be undertaken;

(4) The private lender would not otherwise lend money without the security of a lien on the project property;

(5) There is no reasonable expectation that the loan by the private lender will not be repaid, thereby eliminating any reasonable expectation of foreclosure by the private lender; and

(6) Whenever possible, the grantee has obtained an agreement from the private lender that in the event of foreclosure of the project, that such property would continue to be used for public purposes.

((Section 701, Pub. L. 89–136, 79 Stat. 570) (42 U.S.C. 3211); Sec. 1–105, Executive Order 12185; Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended))

Dated: August 26, 1982.

Carlos C. Campbell,

Assistant Secretary for Economic Development.

[FR Doc. 82-27277 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-63-AD; Amdt. 39-4470]

Airworthiness Directives: British Aerospace HS-125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends existing Airworthiness Directive (AD) 82–11–03 which requires reorientation of the elevator pitch trim switch on the control wheel on certain British Aerospace Model HS–125 airplanes. This amendment corrects the applicability of the AD.

EFFECTIVE DATE: October 12, 1982.

ADDRESSES: The service bulletin specified in this Airworthiness Directive may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Foreign Aircraft Certification Branch, ANM–150S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767–2530. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 82–11–03, Amendment 39–4383, issued May 11, 1982 (47 FR 22350; May 24, 1982), requires that the pitch trim switch be

reoriented on certain British Aerospace, Ltd. HS–125 airplanes. The applicability statement was incomplete as it did not include all serial numbers of affected airplanes as listed on British Aerospace Service Bulletin HS–125 27–124(2705). This amendment corrects that deficiency.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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 AD 82–11–03, Amendment 39–4383 as published in **Federal Register** Doc. 82–13890, appearing at page 22350 in the issue of May 24, 1982, as follows:

"**British Aerospace:** Applies to Model HS–125 Series 700 and all variants serial numbers 25/7001, 7007, 7010, 7013, 7020, 7022, 7025, 7028, 7031, and 7034, 7037, 7040, 7046; NA 0201–NA 0240 inclusive certificated in all categories."

This amendment becomes effective October 12, 1982.

(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)

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

Issued in Seattle, Washington, on September 22, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82–27219 Filed 10–1–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82–ASO–48]

Alteration of Transition Area, Gainesville, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Gainesville, Georgia, Transition Area by revoking an unnecessary extension. This action will raise the base of controlled airspace in an area southwest of the Lee Gilmer Memorial Airport from 700 to 1,200 feet above the surface.

DATES: Effective Date: 0901 G.m.t., December 23, 1982. Comments must be received on or before November 23, 1982.

ADDRESS: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Manager, Airspace and Procedures Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone: (404) 763–7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves raising the base of controlled airspace southwest of the Lee Gilmer Memorial Airport from 700 to 1,200 feet above the surface, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Gainesville, Georgia, Transition Area by revoking an extension which is no longer required. The Gainesville radio beacon, which was located on the Lee Gilmer Memorial Airport, has been relocated to a new site southwest of the airport. The instrument approach procedure, which was predicated on the radio beacon and established the need for the extension, has been cancelled, thus negating the need for the extension. New instrument approach procedures, predicated on the relocated radio beacon, will not require arrival extensions. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982. Under the circumstances presented, the FAA concludes that there is a need for a regulation to alter the Gainesville Transition Area by revoking an extension which is no longer required. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective in less than 60 days after its publication in the **Federal Register.**

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, December 23, 1982, as follows:

Gainesville, GA—Revised

That airspace extending upwards from 700 feet above the surface within an 8.5-mile radius of Lee Gilmer Memorial Airport (lat. 34°16'37"N., long. 83°49'42"W.).

(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 11.69)

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on September 20, 1982.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 82-27217 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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4 CFR Part 71

[Airspace Docket No. 82-ASW-47]

Designation of Transition Area and Alternation of Control Zone: Temple, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area and alter the control zone at Temple, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing standard instrument approach procedures (SIAP's) to the Draughon-Miller Airport. This amendment is necessary since a review of the designated airspace revealed that it is improperly described and in some cases excessive for the protection of aircraft. In addition, the transition area description is being removed from Waco, TX, and placed under the name Temple, TX.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On July 29, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 32727) stating that the Federal Aviation Administration proposed to designate the Temple, TX, transition area and alter the control zone. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 and Subpart F of Part 71, § 71.171, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, December 23, 1982, as follows:

Subpart G § 71.181

Temple, TX New

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Draughon-Miller Airport (latitude 31°09'08"N., longitude 97°24'27"W.), and within 3.5 miles west and 4.5 miles east of the north localizer course extending from the 7-mile radius area to 15.5 miles north of the airport.

Subpart F § 71.171

Temple, TX Revised

Within a 5-mile radius of the Draughon-Miller Airport (latitude 31°09'08"N., longitude 97°24'27"W.), and within 2.5 miles west and 3.5 miles east of the north localizer course extending from the 5-mile radius area to 15.5 miles north of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Forth Worth, TX, on September 23, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-27203 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-46]

Alteration of Transition Area and Control Zone: Waco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area and control zone at Waco, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing standard instrument approach procedures to the Madison-Cooper, T.S.T.I.-Waco, Marlin, and McGregor Airports. This amendment is necessary since a review of the designated controlled airspace revealed that the airspace is not properly designated, needs revision, and in most cases is excessive for that required for the protection of aircraft executing instrument approach procedures to the above airports.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On July 29, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 32726) stating that the Federal Aviation Administration proposed to alter the Waco, TX, transition area and control zone. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 and Subpart F of Part 71, § 71.171, of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, December 23, 1982, as follows:

Subpart G § 71.181:

Waco, TX Revised

That airspace extending upward from 700 feet above the surface with a 20-mile radius of the Madison-Cooper Airport (latitude 31°36'41" N., longitude 97°13'43" W.), and within 5 miles each side of the 357° bearing from the T.S.T.I.-Waco Airport (latitude

31°38'12" N., longitude 97°04'20" W.) extending from the 20-mile radius area to 18 miles north of T.S.T.I.-Waco Airport; and within a 5-mile radius of the Marlin Airport (latitude 31°20'15" N., longitude 96°51'06" W.), and within 4.5 miles each side of 133° radial of the Waco VORTAC extending from the 5-mile radius area to 18 miles northwest of the Marlin Airport.

Subpart F § 71.171:

Waco, TX Revised

Within a 5-mile radius of the Madison-Cooper Airport (latitude 31°36'41" N., longitude 97°13'43" W.), and within 3.5 miles each side of the 148° and 337° radial of the Waco VORTAC extending to 11 miles northwest of the VORTAC; and within 1½ miles west and 4 miles east of the north localizer course extending to 6 miles north; and within 3 miles each side of the 150° radial of the VORTAC extending from the 5-mile radius area to 20 miles southeast of the VORTAC; and within a 5-mile radius of the T.S.T.I.-Waco Airport (latitude 31°38'12" N., longitude 97°04'20" W.), and within 2 miles each side of the 177° bearing extending from the 5-mile radius area to 7 miles south.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on September 23, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-27202 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-40]

Alteration of Transition Area; Oklahoma City, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Oklahoma City, OK. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing instrument approach procedures to the Sundance Airpark (formerly Jack Richards Airport). This amendment is necessary to provide protection for aircraft executing a VOR approach to Runway 17 and an RNAV approach to the Sundance Airpark.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On July 26, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 32157) stating that the Federal Aviation Administration proposed to alter the Oklahoma City, OK, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 G.M.T., December 23, 1982, as follows:

Oklahoma City, OK [Amended]

* * * And within a 6.5-mile radius of the Sundance Airpark (latitude 35°36'06"N., longitude 97°42'21"W.).

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on September 23, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-27271 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASO-51]

Alteration of Transition Area; Morristown, Tenn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Morristown, Tennessee, Transition Area by correcting the description of an arrival extension to coincide with a change to an instrument approach procedure. The alteration will also correct the name and geographical coordinates of the navigational aid upon which the approach procedure is predicated. These actions will result in a reduction in the size of the Transition Area.

DATES: Effective date: 0901 GMT, December 23, 1982. Comments must be received on or before November 23, 1982.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves correcting the description of an arrival area extension as well as the name and location of a navigational aid, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that

changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of the Morristown, Tennessee, Transition Area by realigning the arrival area extension for the instrument approach procedures which serve the Moore-Murrell Airport. In addition, the name and location of a navigational aid will be corrected. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982. Under the circumstances presented, the FAA concludes that there is a need for a regulation to alter the Transition Area so that the arrival extension is properly aligned with instrument approach procedure final approach courses and to list the correct name and coordinates upon which the extension is predicated. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective in less than 60 days after its publication in the **Federal Register.**

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., December 23, 1982, as follows:

Morristown, TN [Amended]

By deleting the words "* * * of the 239° bearing from the Morristown RBN (latitude 36°11'10"N., longitude 83°22'00"W.), * * *" and substituting for them the words "* * * of the 230° bearing from Jefferson RBN (Lat. 36°07'18"N., long. 83°27'33"W.), * * *"

(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 11.69)

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

Issued in East Point, Georgia, on September 21, 1982.

Seymour Oberlander,

Acting Director, Southern Region.

[FR Doc. 82-27270 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 23378; Amdt. No. 95-307]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, or contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 21 CFR Part 95

Aircraft, Airspace.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.M.T., October 28, 1982.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

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

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 21, 1982.

John M. Howard,

Manager, Aircraft Programs Division.

BILLING CODE 4910-13-M

§ 95.1001 DIRECT ROUTES—U.S.

Amended to read:

BAHAMA ROUTES

FROM	TO	MEA
4L:		
Rubin, FL NDB	Nimro INT, FL	2000
Nimro INT, FL	Bimini, BH VOR	2000
Bimini, BH NDB	Nassau, BH NDB	2000
Nassau, BH NDB *1400-MOCA	Resin INT, BH	*2000
49V:		
Biscayne Bay, FL VOR	Eeons INT, FL	2000
Eeons INT, FL	INT 120 M rad Biscayne Bay, FL VOR & 278 M rad Nassau, BH VOR	3000
INT 120 M rad Biscayne Bay, FL VOR & 278 M rad Nassau, BH VOR	Rumba INT, BH	3000
Rumba INT, BH *1400-MOCA	Nassau, BH VOR	*2000
3L:		
Bimini, BH NDB *1300-MOCA	Exter INT, BH	*2000
5L:		
Nassau, BH NDB *1400-MOCA	Cosmo INT, BH	*2000
6L:		
Bimini, BH NDB *1400-MOCA	INT M BRG 088 ZBB NDB & M BRG 125 GBN NDB	*2000
INT M BRG 088 ZBB NDB & M BRG 125 GBN NDB	Cosmo INT, BH	2000
Cosmo INT, BH	Rock Sound, BH NDB	2000

§ 95.1001 DIRECT ROUTES—U.S.

Amended to read in part:

BAHAMA ROUTES

FROM	TO	MEA
1L:		
Grand Bahama, BH NDB	Deers INT, BH	16000
Deers INT, BH	Cosmo INT, BH	2000
Cosmo INT, BH	Cobbl INT, BH	8000
Cobbl INT, BH	Burgo INT, BH	14000
Burgo INT, BH	Lassi INT, BH	24000
63V:		
Freeport, BH NDB *1400-MOCA	Burbo INT, BH	*2000
Burbo INT, BH *1200-MOCA	Bayru INT, BH	*3500
Bayru INT, BH *1400-MOCA	Nassau, BH VOR	*3500
55V:		
Palm Beach, FL VOR *1300-MOCA	Basil INT, FL	*2000
Basil INT, FL	Nimro INT, FL	2500
Nimro INT, FL	Bimini, BH VOR	2000

§ 95.1001 DIRECT ROUTES—U.S.

Amended to delete:

FROM	TO	MEA
Vienna, GA VOR *1800-MOCA	Allenhurst, GA RBN	*3500
Hiroc INT, BH	Freeport, BH NDB	2000
Pt. Tuna, PR NDB	Roosevelt Roads, PR NDB	3200
Portland, FL NDB *1600-MOCA	Dicke INT, BH	*4000
Portland, FL NDB *1600-MOCA	King INT, BH	*4000

BAHAMA ROUTES

52V:		
Biscayne Bay, FL VOR *1200-MOCA	INT 112 M rad Biscayne Bay VOR & 230 M rad Bimini VOR	*2000
INT 112 M rad Biscayne Bay VOR & 230 M rad Bimini VOR *1200-MOCA	INT 112 M rad Biscayne Bay VOR & 278 M rad Nassau VOR	*5000
INT 112 M rad Biscayne Bay VOR & 278 M rad Nassau VOR *1200-MOCA	Rumba INT, BH	*3000
Rumba INT, BH *1400-MOCA	Nassau, BH VOR	*2000
69V:		
INT 112 M rad Biscayne Bay, FL VOR & 230 M rad Bimini, BH VOR *1300-MOCA	Bimini, BH VOR	*2000
Bimini BH VOR	Freeport, BH VOR	2000
8L:		
Marsh Harbour, BH NDB *1200-MOCA	Elbow INT, BH	*2000
7L:		
Nassau, BH NDB *1400-MOCA	Hiroc INT, BH	*2000

§ 95.6003 VOR FEDERAL AIRWAY 3

Amended to read in part:

FROM	TO	MEA
Palm Beach, FL VOR	Vero Beach, FL VOR	2000

§ 95.6004 VOR FEDERAL AIRWAY 4

Amended to read in part:

FROM	TO	MEA
Fedra INT, KY	Lexington, KY VOR	2600

§ 95.6006 VOR FEDERAL AIRWAY 6

Amended to read in part:

FROM	TO	MEA
Sacramento, CA VOR Via N alter *2200-MOCA	Rozzy INT, CA Via N alter	*3500
Rozzy INT, CA Via N alter *7500-MCA Hagan INT, N-bound **3000-MOCA	*Hagan INT, CA Via N alter	**4000
Hagan INT, CA Via N alter	*Audio INT, CA Via N alter N-bound S-bound	 **11000 **7000
*9000-MCA Audio INT, NE-bound **2700-MOCA		
Blois INT, CA *9000-MOCA	Signa INT, CA	*11000
Pitts INT, CA	*Rejoy INT, CA S-bound N-bound	 **5000 **4000
*4000-MCA Rejoy INT, S-bound **2300-MOCA		
Sacramento, CA VOR	Folly INT, CA	3000
Folly INT, CA	*Colom INT, CA NE-bound SW-bound	 **9500 **5000
*9500-MCA Colom INT, NE-bound **3900-MOCA		
Battle Mountain, NV VOR *10100-MOCA	Wells, NV VOR	*11000
Reno, NV VOR Via S alter *9200-MOCA	Hazen, NV VOR Via S alter	*10000

§ 95.6012 VOR FEDERAL AIRWAY 12

Amended to read in part:

FROM	TO	MEA
Saugs INT, CA Via S alter	Palmdale, CA VOR Via S alter	7000
Winslow, AZ VOR *8700-MOCA	Zuni, NM VOR	*9000

§ 95.6016 VOR FEDERAL AIRWAY 16

Amended to read in part:

FROM	TO	MEA
Garne INT, CA	Palm Springs, CA VOR W-bound E-bound	 12000 8000

§ 95.6021 VOR FEDERAL AIRWAY 21

Amended to read in part:

FROM	TO	MEA
Milford, UT VOR	Delta, UT VOR	9600

§ 95.6023 VOR FEDERAL AIRWAY 23

Amended to read in part:

FROM	TO	MEA
Fort Jones, CA VOR	Talem DME Fix, OR	11000
Talem DME Fix, OR	Medford, OR VOR NW-bound SE-bound	 8000 11000

§ 95.6049 VOR FEDERAL AIRWAY 49

Amended to read in part:

FROM	TO	MEA
Mystic, KY VOR	Nabb, IN VOR	3000

§ 95.6053 VOR FEDERAL AIRWAY 53

Amended to read in part:

FROM	TO	MEA
Lexington, KY VOR	Fedra INT, KY	2800

§ 95.6106 VOR FEDERAL AIRWAY 106

Amended to read in part:

FROM	TO	MEA
Gardner, MA VOR	Cinky INT, NH	3000

§ 95.6116 VOR FEDERAL AIRWAY 116

Amended to read in part:

FROM	TO	MEA
Peoria, IL VOR	Joliet, IL VOR	2500
Nepts INT, MI	Keeler, MI VOR	2600

§ 95.6121 VOR FEDERAL AIRWAY 121

Amended to read in part:

FROM	TO	MEA
Fort Jones, CA VOR *10000-MRA	*Bayts INT, OR	15000

§ 95.6140 VOR FEDERAL AIRWAY 140

Amended to read in part:

FROM	TO	MEA
Dyersburg, TN VOR	Goshn INT, TN	3500
Goshn INT, TN	Delha INT, TN	7000
Delha INT, TN	Nashville, TN VOR	7000

§ 95.6171 VOR FEDERAL AIRWAY 171

Amended to read in part:

FROM	TO	MEA
Louisville, KY VOR	Maize INT, IN	3000

§ 95.6172 VOR FEDERAL AIRWAY 172

Amended to read in part:

FROM	TO	MEA
Neola, IA VOR *6500-MRA **2800-MOCA	*Menol INT, IA	**4000
Linde INT, IA	Gumbo INT, IA	3500
Gumbo INT, IA	Newton, IA VOR	3300

§ 95.6175 VOR FEDERAL AIRWAY 175

Amended to read in part:

FROM	TO	MEA
Des Moines, IA VOR	Linde INT, IA	3500

§ 95.6295 VOR FEDERAL AIRWAY 295

Amended to read in part:

FROM	TO	MEA
Stoop INT, FL	Vero Beach, FL VOR	2000

§ 95.6298 VOR FEDERAL AIRWAY 298

Amended to read in part:

FROM	TO	MEA
**Rumor INT, WA *7500-MOCA **9000-MRA	Pertt INT, WA	*9000

§ 95.6393 VOR FEDERAL AIRWAY 393

Amended to read in part:

FROM	TO	MEA
U.S. Mexican Border	Nogales, AZ VOR/DME	*13000
*6500-MOCA		
Nogales, AZ VOR/DME	Tucson, AZ VOR	11500

§ 95.6402 HAWAII VOR FEDERAL AIRWAY 2

Amended to read in part:

FROM	TO	MEA
South Kavai, HI VOR	Kamilo, HI VOR	5000
Kamilo, HI VOR	Morey INT, HI	3000
Morey INT, HI	Broms INT, HI	3000

§ 95.6448 VOR FEDERAL AIRWAY 448

Amended by adding:

FROM	TO	MEA
*Yakima, WA VOR *9500-MCA Yakima VOR, SW-bound	Febus INT, WA	10000
Febus INT, WA	Rubel INT, WA	6000
Rubel INT, WA	Moses Lake, WA VOR	4000

§ 95.6448 VOR FEDERAL AIRWAY 448

Amended to read in part:

FROM	TO	MEA
Angoo INT, WA	Simco INT, WA SW-bound NE-bound	*14500 *8500
*7500-MOCA		

§ 95.6465 VOR FEDERAL AIRWAY 465

Amended to read in part:

FROM	TO	MEA
Elko, NV VOR *11800-MCA Wells VOR SW-bound **12700-MOCA	*Wells, NV VOR	**13000

§ 95.6468 VOR FEDERAL AIRWAY 468

Amended to read in part:

FROM	TO	MEA
Swany INT, WA	Hitch INT, WA	8500

§ 95.6494 VOR FEDERAL AIRWAY 494

Amended to read in part:

FROM	TO	MEA
Sacramento, CA VOR *2200-MOCA	Rozzy INT, CA	*3500
Rozzy INT, CA *7500-MCA Hagan INT, N-bound **3000-MOCA	*Hagan INT, CA	**4000
Hagan INT, CA	*Audio INT, CA S-bound N-bound	**7000 **11000
*9000-MCA Auburn INT, NE-bound **2700-MOCA		

§ 95.6495 VOR FEDERAL AIRWAY 495

Amended to read in part:

FROM	TO	MEA
Fort Jones, CA VOR *10000-MRA	*Bayts INT, OR	15000
Bayts, INT, OR *10000-MRA	*Paple INT, OR	10000

§ 95.7180 JET ROUTE NO. 180 is amended to delete:

FROM	TO	MEA	MAA
Junction, TX VORTAC	Humble, TX VORTAC	18000	45000

2. By amending Sub-part D as follows:

§ 95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

Amended by added:

AIRWAY SEGMENT FROM	TO	CHANGEOVER POINT DISTANCE FROM
V-16		
Phoenix, AZ VOR	Totec INT, AZ	38 Phoenix
V-23		
Fort Jones, CA VOR	Medford, OR VOR	25 Fort Jones

§ 95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

Amended to read in part:

AIRWAY SEGMENT FROM	TO	CHANGEOVER POINT DISTANCE FROM
V-4		
Yakima, WA VOR	Suned INT, WA	30 Yakima

§ 95.8005 JET ROUTES CHANGEOVER POINTS

Amended to read in part:

AIRWAY SEGMENT FROM	TO	CHANGEOVER POINT DISTANCE FROM
J-133		
Biorka Island, AK VORTAC	Hinchinbrook, AK NDB	100 Biorka Island

[FR Doc. 82-27221 Filed 10-1-82; 8:45 am]
BILLING CODE 4910-13-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-48]

Staff Accounting Bulletin No. 48

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin reflects the staff's long-standing position that when a company acquires assets from promoters and shareholders in exchange for stock prior to or at the time of its initial public offering such assets should generally be recorded at the cost to the promoter or shareholder.

DATE: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Eugene W. Green, Office of the Chief Accountant (202/272-2161); Joseph Cribbin, Office of Small Business Policy, Division of Corporation Finance (202/272-2644); or Howard P. Hodges, Jr., Chief Accountant, Division of Corporation Finance (202/272-2554), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

List of Subjects in 17 CFR Part 211

Accounting, Reporting requirements, Securities.

George A. Fitzsimmons,

Secretary.

September 27, 1982.

Staff Accounting Bulletin No. 48

The staff herein adds Section G to Topic 5 regarding the valuation of assets acquired from promoters and shareholders. The staff believes that if nonmonetary assets are received by a newly formed or closely held company from promoters or shareholders in exchange for stock, such assets should normally be recorded at the historical cost basis of the promoters or shareholders.

Topic 5: Miscellaneous Accounting

* * * * *

G. Transfers of Nonmonetary Assets by Promoters or Shareholders

Facts: Nonmonetary assets are exchanged by promoters or shareholders for all or part of a company's common stock just prior to or contemporaneously with a first-time public offering.

Question: Since paragraph 4 of Accounting Principles Board Opinion No. 29, "Accounting for Nonmonetary Transactions," states that the Opinion is not applicable to transactions involving the acquisition of nonmonetary assets or services on issuance of the capital stock of an enterprise, what value should be ascribed to the acquired assets by the company?

Interpretive Response: The staff believes that transfers of nonmonetary assets to a company by its promoters or shareholders in exchange for stock prior to or at the time of the company's initial public offering normally should be recorded at the transferor's historical cost basis determined under generally accepted accounting principles.

The staff will not always require that predecessor cost be used to value nonmonetary assets received from an enterprise's promoters or shareholders. However, deviations from this policy have been rare applying generally to situations where the fair value of either the stock issued [1] or assets acquired is objectively measurable and the transferor's stock ownership following the transaction was not so significant that the transferor had retained a substantial indirect interest in the assets as a result of stock ownership in the company.

[FR Doc. 82-27234 Filed 10-1-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 410

Federal Old-Age, Survivors, and Disability Insurance; Black Lung Benefits—Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Social Security Administration regulation published December 20, 1967, 32 FR 19159-19176, which modified Subpart E of Part 20 CFR Part 404 on deductions, reductions, nonpayments, and increases of Federal Old-age, Survivors, and disability insurance benefits. This document also corrects a final regulation, 20 CFR Part 410, Subpart E, which was published on May 4, 1982, 47 FR 19116-19117, to authorize the Social Security Administration to withhold payments of Part B black lung benefits where Part C black lung benefits, administered by the Department of Labor are paid for the same period.

DATES: The correction to § 404.458 is effective December 20, 1967. The correction to § 410.560 is effective September 16, 1981.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7519.

SUPPLEMENTARY INFORMATION: On December 20, 1967, we published final regulations modifying Subpart E of 20 CFR, Part 404, on deductions, reductions, nonpayments, and increases of Federal Old-Age, Survivors, and Disability Insurance benefits (32 FR 19159-19176). In § 404.458 of those regulations, six words and a period were inadvertently omitted, resulting in the second and third sentences of the section being run together into one sentence. This notice corrects the misprint.

(1) On May 4, 1982, we published final regulations modifying Subpart E of 20 CFR, Part 410, to authorize the Social Security Administration to withhold payment of Part B Black Lung benefits where Part C Black Lung benefits administered by the Department of Labor are paid for the same period (47 FR 19116-19117). We did this by expanding the definition of "overpayment" in 20 CFR 410.560(a) to include these duplicate payments under Part C. In doing so, the second sentence of paragraph (a), which we had meant to retain, was inadvertently omitted. This notice corrects the final regulation by reinstating that sentence.

Corrections

1. Section 20 CFR 404.458, FR Doc. 67-14735, as published as a final regulation December 20, 1967, on page 32 FR 19174, is corrected to read as follows:

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

Notwithstanding the provisions described in § 404.415, § 404.417, § 404.421, § 404.422, § 404.451, and § 404.453 about the amount of the deduction to be imposed for a month, no such deduction is imposed for a month when the benefits payable for that month to all persons entitled to benefits

[1] Estimating the fair value of the common stock issued, however, is not appropriate when the stock is closely held and/or seldom or ever traded.

on the same earnings record and living in the same household remain equal to the maximum benefits payable to them on that earnings record. Where making such deductions and increasing the benefits to others in the household (for the month in which the deduction event occurred) would give members of the household less than the "maximum" (as determined under § 404.404) payable to them, the amount of deduction imposed is reduced to the difference between the maximum amount of benefits payable to them and the total amount which would have been paid if the benefits of members of the household not subject to deductions were increased for that month. The individual subject to the deduction for such month may be paid the difference between the deduction so reduced and his benefit as adjusted under § 404.403 (without application of § 404.402(a)). All other persons in the household are paid, for such month, their benefits as adjusted under § 404.403 without application of § 404.402(a).

2. Paragraph (a) of 20 CFR 410.560, FR Doc. 82–12016, as published as a final regulation May 4, 1982, at 47 FR 19117, is corrected to read as follows:

§ 410.560 Overpayments.

(a) *General.* As used in this subpart the term "overpayment" includes a payment where no amount is payable under Part B of title IV of the Act; a payment in excess of the amount due under Part B or Part C of title IV of the Act; a payment resulting from the failure to reduce benefits under section 412(b) of the Act (see §§ 410.520 and 410.530); a payment to a resident of a State whose residents are not eligible for payment (see § 410.550); a payment of past due benefits to an individual where such payment had not been reduced by the amount of attorney's fees payable directly to an attorney (see § 410.686(d)); and a payment resulting from the failure to terminate benefits of an individual no longer entitled thereto. As used in this section, the term "beneficiary" includes a qualified dependent for augmentation purposes and the term "benefit" includes the amount of augmented benefits attributable to a particular dependent (see § 410.510(c)).

* * * * *

Dated: September 23, 1982.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 82-27108 Filed 10-1-82; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 215, 235, 236 and 812

[Docket No. R-82-974]

Restriction on Use of Assisted Housing

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends Parts 200, 215, 235, 236 and 812 to implement section 214 of the Housing and Community Development Act of 1980, as amended by section 329 of the Housing and Community Development Amendments of 1981, which prohibits the Secretary from making available financial assistance under the United States Housing Act of 1937, sections 235 and 236 of the National Housing Act or section 101 of the Housing and Urban Development Act of 1965 available for the benefit of any alien who is not a lawful resident of the United States pursuant to certain provisions of the Immigration and Nationality Act.

EFFECTIVE DATE: Upon expiration of first period of 30 calendar days of continuous session of Congress following publication, subject to waiver. Further notice of the effective date of this final rule will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: For Parts 200, 215, and 236: James Tahash, Program Planning Division, Office of Multifamily Housing Management and Occupancy, Department of Housing and Urban Development, Washington, D.C. 20410; telephone (202) 755–5654.

For Part 235: John Coonts, Single Family Development Division, Office of Single Family Housing, Department of Housing and Urban Development, Washington, D.C. 20410; telephone (202) 755–6720.

For Part 812: Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, Washington, D.C. 20410; telephone (202) 426–0744. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A proposed rule to amend Parts 200, 215, 235, 236 and 812 with regard to the prohibition on the Secretary from making certain financial assistance available for the benefit of certain categories of aliens was published in the Federal Register for public comment on May 3, 1982 (47 FR 18914). Twenty-four comments were received. Fourteen of these comments were from housing authorities, four from or on behalf of management companies, three from legal services corporations, and one each from a trade association, mortgagee, and HUD employee.

DISCUSSION OF COMMENTS: In general, the comments from the housing authorities and management companies were primarily concerned with a perceived impact of the proposed regulations on workload resources as well as the effect of the requirements on applicants and tenants. The comments of the legal services corporations, including the National Housing Law Project, were directed towards the protection of individuals' interests.

The housing authorities commented that they believe that the requirements of the proposed rule would impose a substantial additional administrative burden on the housing authorities and others managing subsidized housing. Moreover, they asserted that the new procedure would increase paperwork and processing time and therefore, was seen as contrary to the Administration's efforts to streamline paperwork and Federal procedures.

The Department is aware that the new procedure will increase the workload of housing authorities and owners. The rule has been drafted, however, to limit the added work to that which is necessary to carry out the statute's mandate. The responsibility of obtaining the required documentation rests with the applicants, tenants, cooperative members and homebuyers. The housing authorities and owners must only (1) advise the applicants, etc. that they are required to present documentation and (2) complete blocks for three data elements on the applications (place of birth, alien registration number, if any, and a code number for citizenship/alien status). The housing authority or owner is not required to verify the authenticity of the document but merely to note the type of document submitted, the issuing authority and the serial number if any. If the document does not contain a serial number, a photocopy must be retained. Further, the Department does not believe that the new procedures are contrary to the Administration's desire to reduce paperwork. The Paperwork Reduction Act is intended to reduce unnecessary or duplicative requirements, but not to eliminate necessary management controls or

controls needed to assure compliance with specific statutory requirements.

Several comments stated that the proposed regulations would impose a burden on applicants and tenants, especially in the case of elderly persons, because required documentation may not be readily available or obtainable for them. In addition, the commentors suggested that unless adequate notice is given, tenants may not be able to obtain documentation in sufficient time for their recertifications.

The Department previously considered the fact that documentation may not be readily obtainable in all cases. The variety of documents listed in the regulations minimizes the burden of producing an acceptable document. In addition, there is a provision which permits a statement from a third party in those cases in which other acceptable documentation is unavailable. Although a third party statement is intended as documentation of "last resort" and must be accompanied by a reasonable explanation as to why other documentation is unavailable, it is specifically designed to ease the difficulties faced by the elderly and others who either do not have any of the other documents or find it a hardship to obtain them. Further, in light of the comments concerning adequate notice to current tenants, the Department has expanded the procedural provision of the rule to require, generally, that notice of the documentation requirements be given to all current tenants within 30 days after receipt of the Department's instructions regarding the form of such notice, and that the documentation requirements will not be applicable to recertifications effective less then 60 days after such notice of the requirements has been given. The required notice will describe the documentation requirements themselves (including the third-party statement alternative that may be available to establish citizenship), the times when such documentation will be required (including subsequent annual recertifications), and the consequences of failure to satisfy the requirements (i.e., termination of assistance and possible eviction).

A number of comments from housing authorities suggested alternatives to requesting documentation. Several suggested that applicants and tenants be asked orally if they are citizens or are within one of the eligible categories of aliens. If, during the interview, there was any indication of lack of citizenship or eligible alien status, the individual could then be required to produce the prescribed documentation. A trade association, a management company and other housing authorities suggested that each applicant or tenant should be required to sign a certification attesting to his/her citizenship or alien eligibility status. The commentors further suggested that the certification contain a warning that it is a criminal offense to make willful false statements or misrepresentations to any department or agency of the United States. The last alternative suggested by housing authorities was that they be able to make the necessary verifications by checking with other departments or agencies which administer programs requiring evidence of citizenship or eligible alien status. Housing authorities would then make independent determinations only for those applicants or tenants who do not receive benefits under another program.

The Department considered several alternatives before deciding to require documentation. Other agencies have used a system of voluntary disclosure but, as the Department noted at the time of publication of the proposed rule, the Department of Agriculture requires similar documentation by applicants for food stamp benefits, and Section 214 is modeled closely upon the food stamp legislation. A voluntary disclosure process may be ineffective because such disclosures are difficult to verify. The use of certifications affords little protection to the Department's interest because they can be easily falsified. The threat of criminal prosecution may be of little concern to those aliens facing possible deportation if their true situations were known. Finally, use of determinations of other departments or agencies may not be feasible because those determinations are not all based upon the same type of citizenship verification system as that considered necessary by HUD. For example, prior to April 1978, the Social Security Administration did not use a documentary system of establishing citizenship. In addition, this alternative would require housing authorities or owners to determine whether the applicant or tenant is receiving benefits of a program which requires evidence of citizenship or eligible alien status, obtain authorization from the applicant or tenant for the other department or agency to release information, forward that authorization to the other department or agency and then enter the appropriate information on the application when it is received. Under this alternative, housing authorities would still be required to obtain appropriate documentation in those cases in which the applicant or tenant is not a participant in another program. The Department believes that this procedure would be more burdensome than that set out in the regulation. However, the Department plans to continue to explore this aspect of administration of the requirements with other agencies, particularly the Department of Agriculture, which administer similar requirements.

As noted above, the documentation requirements have been patterned after the requirements currently established by the Department of Agriculture for the food stamp program (see 7 CFR Part 273), a fact which, the Department believes, will itself minimize the difficulty of compliance by eligible aliens who, in any event, are required by law to have their alien registrations in their possession at all times (8 U.S.C. 1304(e)). In one important respect, however, the Department has elected to differ from the food stamp requirements. While documentation of eligible alien status by food stamp applicants is mandatory, documentation of citizenship appears to be required only if an applicant's statement of citizenship "is questionable" (7 CFR 273.2(f)(2)(ii)). The Department has elected to require documentation of citizenship in all cases in order to assure, in accordance with the directions of the Conference Report regarding implementation of the legislation, that the rule is "impartially applied without regard to any subjective opinion as to whether a particular individual might or might not be a person not lawfully present in the United States" (House Report No. 97-208 at 697).

However, as provided in the proposed rule, documentation of citizenship status is required only once during continuous occupancy. One housing authority commentor suggested that the same provision be extended to permanent resident aliens. The Department has not adopted this change because of its concern that an alien's status may be subject to change at any time. Moreover, as noted above, the Department does not believe that this requirement will be burdensome upon aliens who are required by law to carry their registrations in their possession at all times.

Several comments argued that the rules should be applied only to new applicants for assisted housing. These comments were made both by or on behalf of project owners and managers concerned over "mass eviction and financial chaos for projects housing a substantial population of aliens (over 60% of the total project population)" and by tenant representatives.

The Department believes that a determination not to apply the prohibitions of Section 214 to current occupants of assisted housing is not an alternative that is available under the language of the statute. Moreover, the legislative history clearly evidences Congressional intent that the statute be applied to current occupants, albeit in a manner that does not permit HUD or other public officials "to invade the privacy of occupants of assisted housing in an effort to identify illegal aliens and to secure their removal." House Report No. 97-208 at 697. The Department believes that this admonition is satisfied by the rule's provisions that documentation by current tenants shall be required only in connection with the periodic recertification process.

The Conference Report further directed the Secretary to

> "* * * Take steps to provide for an orderly transition which will satisfy the intent of the proposal to make assisted housing available to lawful residents exclusively. In undertaking this task, the Secretary is specifically directed to ensure that persons administering assisted housing programs deal fairly and humanely with all persons discovered to be occupying housing in violation of this section" (House Report No. 97-208 at 697).

The foregoing passage also clearly indicates an assumption that the statutory prohibition applies to current occupants of assisted housing. Nevertheless, one commentor suggested that the "fair and human approach" would be to apply the rule prospectively to applicants only. As indicated, the Department believes that such an approach would be contrary to the plain meaning of the statute and the clear intent of Congress.

The Department believes that an "orderly transition" is provided adequately by the provisions of the final rule regarding advance notification of the documentation requirements at least 60 days prior to the effective date of the recertification for which such documentation will be required.

The final rule has also been modified to clarify that any eviction resulting from discovery of a violation may be effected only in accordance with applicable procedural requirements under existing regulations. The rule also provides that nothing in such procedural regulations shall be construed to prevent an owner, at its election, from considering ineligible alien status to constitute "good cause" for eviction. In this connection, the final rule contains an important modification from the proposed rule, which provided that, except for public housing tenants, an ineligible alien in occupancy would have the option of vacating the unit or entering into a new lease on an unassisted basis. Upon further consideration, the Department does not believe that it has the authority to restrict the choices of project owners to this extent in favor of occupants who, by definition, are not eligible for the statutory benefits. The final rule makes it clear, therefore, that commencement of a new tenancy on an unassisted basis is at the option of the owner, not the tenant.

At the same time, by promulgating this rule, the Department does not intend to make a determination that ineligible alien status is or is not "good cause" for termination of tenancy under State or local law, but only to confirm that the Department does not consider that to be a Federal question. (In exercising such election, the owner remains obligated to do so on a basis not involving discrimination prohibited by Title VIII of the Civil Rights Act of 1968 or other applicable laws.) The Department is also mindful that in some circumstances, extending an unassisted lease might conflict with the owner's obligation under a housing assistance payments contract to maintain a given number of assisted units.

Two comments stated that one ineligible alien residing in an assisted housing unit should not make everyone in the unit ineligible for assistance. One of the commentors recommended, instead, that assistance should be prorated according to the number of eligible individuals in the unit. As indicated above, the legislation precludes financial assistance "for the benefit of any alien" not within certain categories. The Department believes that the benefit of assistance is realized by every occupant of the unit, not merely by the individual or individuals who may be liable on the lease, and that the statute prohibits any such benefit to any ineligible alien. As noted above, the purpose of the legislation, as stated by the Conference Report, is "to make assisted housing available to lawful residents *exclusively*" (emphasis added).

The alternative of proration of benefits, while appropriate in the case of direct financial assistance to beneficiaries (such as food stamps or welfare assistance), is not feasible in the context of the type of assistance involved in assisted housing which, instead, takes the form of reduced rental to the beneficiary and a subsidy payment to a project owner. The Department does not have authority either to permit the charging of a rent higher than the statutory maximum on the basis of partial eligibility or to reduce the subsidy payment to the owner on that basis. (A reduction of subsidy to the owner, without a higher rent payment by the tenant, would deprive the owner of receipt of the full contract rent.)

There were several comments concerning the use or disclosure of information or documents furnished by applicants or tenants. The commentors indicated that the rule should specify that HUD may only release the information for the purpose of investigating citizenship or alien status to determine eligibility for housing assistance and, further, that the rule should also bar any other agency to whom such information is disclosed for such purposes from utilizing the information for any other purpose. Specifically, if information regarding citizenship or alien status is disclosed, for verification purposes, to the Immigration and Naturalization Service, the commentors would wish that, INS be barred from utilizing the information for its purposes in enforcing the immigration laws.

The Department believes that the rule contains adequate safeguards regarding confidentiality of documents and information submitted by individuals and, more importantly, that the Department is without authority or mandate to restrict other agencies charged with responsibility of enforcing other laws from utilizing information legitimately disclosed to them for such purposes. The rule permits the release of such documents and information by the owner, PHA or mortgagee only in connection with the verification process. (Clarifying changes have been made in the final rule to require that, upon request by the Department, the verification consent form shall be made available to the Department. The proposed rule was susceptible to an interpretation that release of the form and information to the Department was discretionary, which was not the Department's intent.) The Department is authorized, by consent, to release documents or information to other government agencies solely for verification purposes. Individuals submitting such information must be aware, however, that other agencies, including the Social Security Administration and the Immigration and Naturalization Service, may utilize information disclosed by the Department in furtherance of their own administrative and enforcement responsibilities.

The Department also notes that it does not believe that the foregoing possibility of utilization of information

by other agencies for enforcement purposes is in any way inconsistent with the Privacy Act, which authorizes the disclosure of records for "routine uses" (5 U.S.C. 552a(b)(3)). The "routine uses" applicable to all Departmental Systems of Records, as heretofore published, include referral of records indicating violations or potential violation of law, whether civil, criminal or regulatory in nature, to appropriate agencies charged with responsibility for enforcing or implementing such laws (FR 34822 (August 6, 1982)).

One comment suggested that the list of acceptable documents should include a baptism certificate created within one year of birth. The final rule has been modified in Sections 200.182 and 812.5 to include this document as well as other religious documents which provide evidence of birth in the United States. In addition, the following two documents are added: Certificate of Citizenship and Consular Report of Birth.

Sections 200.183 and 812.6 were revised to reflect more clearly the responsibility of the owners, mortgagees or PHAs on the one hand, and applicants, tenants, cooperative members and homebuyers on the other. It is now clear that (1) owners, mortgagees or PHAs must advise applicants, tenant-lessees, cooperative members and homebuyers that they must provide acceptable documentation and (2) it is the applicant's responsibility to provide such documentation.

Numerous clarifying technical amendments have been made throughout the final rule. In the provision relating to Section 235, the events requiring documentation of citizenship or eligible alien status have been modified to refer to "foreclosure relief pursuant to Part 203, Subchapter C, of this chapter" in order to encompass Temporary Mortgage Assistance Payments pursuant to Section 230 of the National Housing Act and the Department's recently published implementing regulations (47 FR 33252 (August 2, 1982)). The final rule also continues in effect the provisions of the Department's interim rule regarding nonimmigrant student aliens which was effective November 17, 1981. The Department does not intend that the provisions of the final rule extending applicability of the documentation requirements to the first recertification occurring 60 days or more after notification of the requirements will operate to suspend application of the prior rule to occupants who have been identified as nonimmigrant student aliens.

On June 15, 1982, subsequent to the close of the public comment period on the proposed rule, the United States Supreme Court rendered its decision in *Plyler v. Doe*, No. 80–1538, 50 U.S.L.W. 4650, holding that a Texas statute which withheld State funds from local school districts for the education of children not "legally admitted" to the United States, and which authorized local school districts to deny enrollment to such children, violates that Equal Protection Clause of the Fourteenth Amendment. The Department has examined this decision and has consulted the Assistant Attorney General, Office of Legal Counsel, of the Department of Justice as to whether the decision indicates any constitutional defect in Section 214 or the Department's proposed implementation thereof. On the basis of such examination and the advice received pursuant to such consultation, the Department has concluded that the decision does not affect the presumed validity of the statute or the Department's proposed implementation thereof.

The Department has also reviewed the provisions of S. 2222, the Immigration Reform and Control Act of 1982, as passed by the Senate on August 17, 1982. The Department believes that, if enacted by Congress in the form passed by the Senate, this statute would not affect Section 214 or its implementation pursuant to the final rule published herewith. Section 301 of the bill would authorize the Attorney General to adjust the status of certain aliens who entered the United States prior to January 1, 1980, to temporary or permanent resident status. However, the bill further provides that no entrant whose status is thus adjusted shall be eligible for "any program for financial assistance under Federal law . . . on the basis of financial need" during such temporary resident status or for a period of three years after the date of adjustment to permanent resident status.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10278, 451 7th Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because applicants and tenants who are deemed ineligible aliens will be replaced by others who are eligible. Housing authorities and owners will be able to rent units to these eligible individuals.

The Catalog of Federal Domestic Assistance numbers are: 14.103, Interest Reduction Payments-Rental and Cooperative Housing for Lower Income Families; 14.105, Interest Reduction-Homes for Lower Income Families; 14.146, Low Income Housing-Assistance Program (Public Housing); 14.147, Low Income Housing-Homeownership Opportunities for Low-Income Families; 14.149, Rent Supplements-Rental Housing for Lower Income Families; and 14.156, Lower-Income Housing Assistance Program (Section 8).

Information collection requirements contained in Part 200 and Part 812 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511) and have been assigned OMB control number 2502–0204. The revised reporting or recordkeeping provisions included in Part 235 and Section 812.9 will be submitted to OMB for approval and will not be effective until such approval is received.

This rule was not listed in the Department's most recent Semiannual Agenda of regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and

recordkeeping requirements, Minimum property standards.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 235

Condominiums, Cooperatives, Low- and moderate-income housing, Mortgage insurance, Homeownership, Grant programs—housing and community development.

24 CFR Part 236

Low- and moderate-income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 812

Low- and moderate-income housing.

Accordingly, 24 CFR Parts 200, 215, 235, 236 and 812 are amended as follows:

PART 200—INTRODUCTION

1. The Title of Subpart G is changed to read "Restrictions on Use of Assisted Housing."

Subpart G—Restrictions on Use of Assisted Housing

2. Sections 200.180–200.184 are added to Subpart G, as follows:

§ 200.180 Restrictions on eligibility for assisted housing.

(a) Financial assistance pursuant to Section 235 of the National Housing Act (12 U.S.C. 1715z), Section 236 of the National Housing Act (12 U.S.C. 1715z–1), or Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) may not be made for the benefit of any alien unless that alien is a resident of the United States and one of the following:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by Sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 1101(a)(20)), excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) An alien who entered the United States prior to June 30, 1948, or such subsequent date as enacted by law, has continuously maintained his/her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or pursuant to the granting of asylum (which has not been terminated) under Section 208 of such Act (8 U.S.C. 1158);

(4) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to Section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(5) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)); or

(6) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)).

(b) For purposes of this chapter, "financial assistance" is deemed to be made for the benefit of a person if such person:

(1) Is an occupant of a dwelling or cooperative unit covered by a mortgage insured under Section 235 of the National Housing Act and Part 235 of this chapter and with respect to which assistance payments are being made under a contract between the mortgagee and the Secretary pursuant to Section 235(b) of the National Housing Act;

(2) Is an occupant of a dwelling unit in a rental or cooperative project having a mortgage with respect to which interest reduction payments are being made under a contract between the mortgagee and the Secretary pursuant to Section 236 of the National Housing Act and for which dwelling unit the monthly rental charge being paid to the owner is less than the applicable fair market rental;

(3) Is an occupant of a rental or cooperative dwelling unit with respect to which rental assistance payments are being made under a contract between the Secretary and the owner pursuant to Section 236(f)(2) of the National Housing Act and Part 236, Subpart D, of this chapter; or

(4) Is an occupant of a rental or cooperative dwelling unit with respect to which rent supplement payments are being made under a contract between the Secretary and the owner pursuant to Section 101 of the Housing and Urban Development Act of 1965 and Part 215 of this chapter.

§ 200.181 Definitions.

As used in this chapter, the following terms have the meaning indicated.

(a) *Citizen.* A citizen of the United States.

(b) *Eligible alien.* An alien who establishes, in the manner prescribed by § 200.182 of this part that he or she meets the requirements contained in § 200.180 of this part.

(c) *Ineligible alien.* An alien who fails to establish, in the manner prescribed by §200.182 of this part, that he or she meets the requirements contained in § 200.180 of this part.

(d) *Nonimmigrant student-alien.* An alien having a residence in a foreign country which he/she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States as a nonimmigrant alien as defined in Section 101(a)(15) (F)(i) and (M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F)(i) and (M)), temporarily and solely for the purpose of pursuing such a full course of study at an established institution of learning or other recognized place of study in the United States. Nonimmigrant student-alien also means the alien spouse and minor children of such student if accompanying him/her or following to join him/her.

(e) *Verification consent form.* A document prescribed by the Department of Housing and Urban Development (Department) which provides that (1) the form itself, (2) copies of citizenship or alien status documents or information contained therein, and (3) other information furnished by or for any person claiming to be a citizen or eligible alien shall, upon request, be made available to the Department, which may release any or all such documents or information to other Federal, State or local government agencies, including the Social Security Administration and the Immigration and Naturalization Service, for verification purposes. Further, the form shall provide that any such government agency may release any information or documents relating to the verification of citizenship or alien status to the Department.

§ 200.182 Evidence of citizenship or eligible alien status.

(a) *Requirement for documentation.* Applicants for the benefits of assistance,

and tenants and cooperative members who are receiving the benefits of assistance, as described in § 200.180(b) of this part, shall furnish documentary evidence of citizenship or eligible alien status and accompanying signed verification consent forms for themselves regardless of their ages, and for all other persons 18 years of age or older who will or do occupy the housing unit, when required pursuant to § 200.184 of this part. Failure to provide documentary evidence and verification consent forms required by this section shall result in denial or termination of the benefits of assistance as further prescribed in Parts 215, 235 and 236 of this chapter. (Approved by the Office of Management and Budget under OMB control number 2502–0204).

(b) *Citizenship status.* (1) Each person claiming to be a citizen shall produce the original or a certified copy of one of the following documents to evidence citizenship:

(i) U.S. Passport;

(ii) Birth Certificate;

(iii) Consular Report of Birth;

(iv) Naturalization Certificate;

(v) Certificate of Citizenship;

(vi) U.S. Citizenship Identification Card (INS Form I–197);

(vii) Commuter Status Card (INS form I–178);

(viii) Military Discharge Form (DD214);

(ix) Selective Service Certificate of Registration (Form SSS 2);

(x) Baptismal or other religious certificate which provides evidence of birth in the United States and which was created within one year of birth;

(xi) Documentation which is issued by the Bureau of Indian Affairs and which indicates membership in a Federally recognized tribe; or

(xii) Voter registration card.

(2) If none of the above documents can be obtained and a person claiming to be a U.S. citizen can provide a reasonable explanation, or can demonstrate a good faith effort to obtain such document(s) the person may submit a signed statement from a third party who can produce one of the above documents to demonstrate that he/she is a citizen. The third party must, under penalty of perjury, attest or affirm that the person for whom documentation is unavailable is a citizen.

(c) *Eligible alien status.* (1) Each person claiming to be an eligible alien shall produce in original form one of the following documents to evidence eligible status:

(i) Form I–151, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(iii) Form I–181B, Processed for I–551, Temporary Evidence of Lawful Admission for Permanent Residence (for permanent resident aliens);

(iv) Form AR–3a, Alien Registration Receipt Card (Issued during 1941–1949 for permanent resident aliens);

(v) Form I–94, Arrival-Departure Record (Annotated either "Section 207" or "Refugee," or "Section 208" or "Asylum");

(vi) Form I–94, Arrival-Departure Record—Parole Edition (Annotated "Section 212(d)(5)," or "Conditional Entry" or "Section 203(a)(7)"); or

(vii) Form I–94, Arrival-Departure Record (Annotated "Section 243(h)").

(2) The following documents are not acceptable evidence of eligible alien status:

(i) Form I–94, Arrival-Departure Record: Annotated with any codes "A" through "L" for Non-Immigrants (for temporary resident aliens);

(ii) Form I–95A, Crewman's Landing Permits (for alien visitors);

(iii) Form I–144, Mexican Border Visitors Permit;

(iv) Form I–185, Nonresident Alien Canadian Border Crossing Card;

(v) Form I–186, Nonresident Alien Mexican Border Crossing Card;

(vi) Unnumbered form, Nonresident Alien Canadian Border Crossing Identification Card; or

(vii) Any Foreign issued Visa.

(d) *Responsibility for documentation.* Applicants, tenants and cooperative members are responsible for the production of documentation for themselves and all others for whom documentation is required pursuant to Paragraph (a) of this section. A photocopy of each document (or original if released by such persons), and a signed verification consent form shall be retained by the owner or mortgagee, as appropriate, except that a photocopy need not be made or retained of any document bearing an identifying serial number if a record of such serial number and other necessary identifying information is made and retained in such manner as shall be prescribed by the Department. (Approved by the Office of Management and Budget under OMB control number 2502–0204).

(e) *Disclosure.* Documents and information evidencing or pertaining to citizenship or alien status, including the verification of such status, furnished to the owner or mortgagee, as appropriate, by or for the benefit of persons described in this section or by Federal, State or local government agencies shall be deemed to have been submitted in confidence. All such documents and information shall be safeguarded appropriately to restrict their use or disclosure by such owner or mortgagee to persons directly connected with the verification of such status or the administration or enforcement of the financial assistance programs set forth in § 200.180 of this part.

§ 200.183 Notice of requirements.

(a) Owners shall furnish notice of the requirements for documentation of citizenship or alien status prescribed in § 200.182 of this part (including the requirements as to verification consent forms) (1) to each applicant for the benefit of assistance (as defined in § 200.180(b) of this part) who makes application therefor, or whose application therefor is pending or approved subject to certification of eligibility or income for initial occupancy, on or after [insert effective date of this rule], and (2) to each tenant or cooperative member receiving the benefit of assistance in occupancy at [insert effective date of this rule], or whose eligibility for the benefit of assistance and income has been certified pending occupancy at [insert effective date of this rule]. Such notice shall describe the documentation required (including the circumstances under which the alternative documentation described in § 200.180(b)(2) of this part may be provided), the times when such documentation shall be required (including applicable requirements regarding production of documentation upon recertification), and the consequences of failure to satisfy such requirements, and shall be given in a form prescribed by, or complying with instructions issued by, the Department.

(b)(1) The notice described in paragraph (a) of this section shall, in the case of tenants or cooperative members in occupancy at [insert effective date of this rule], be given to all such persons within 30 days after receipt by the owner of the Department's instructions regarding the form of such notice.

(2) The notice described in Paragraph (a) of this section shall, in the case of applicants whose applications have, as of [insert effective date of this rule], been pending or approved subject to certification of eligibility or income for initial occupancy at such date, be given to all such persons within 60 days of their anticipated entry into a housing unit.

(c) Notice of the requirements and consequences described in Paragraph (a) of this section shall be given, in a form prescribed by, or complying with

instructions issued by, the Department, by mortgagees to all applicants for the benefits of assistance under Section 235 of the National Housing Act, and, upon the occurrence of any of the events described in § 235.13(a) of this chapter, to homeowners receiving the benefits of such assistance.

§ 200.184 Implementation.

(a) Applications for the benefit of assistance (as defined in § 200.180(b) of this part) shall not be approved, and eligibility or income shall not be certified for initial occupancy, on or after [insert effective date of this rule] without satisfaction of the requirements of § 200.182 of this part.

(b) Owners shall require satisfaction of the requirements of § 200.182 of this part upon each recertification of income by a tenant or cooperative member receiving the benefit of assistance (as defined in § 20.180(b)(2)–(4)) of this part occurring on or after [insert effective date of this rule], except that (1) documentation of citizenship status shall not be required as to any citizen more than once during continuous occupancy by such person, and (2) such documentation shall not be required in connection with any recertification effective less than 60 days after the notice required by § 200.183 of this part shall have been furnished to the tenant or cooperative member pursuant to Paragraph (b) of such section.

PART 215—RENT SUPPLEMENT PAYMENTS

§ 215.1 [Removed]

3. Section 215.1(i) is removed.

4. Section 215.20(b)(2) is revised to read:

§ 215.20 Qualified tenant.

* * * * *

(b)(1) * * *

(2) The benefits of rent supplement payments shall be available on or after [insert effective date of rule] only to an individual or family as to which the requirements of § 200.182 of this chapter have been satisfied, except to the extent that satisfaction of such requirements is extended to a later date under the provisions of § 200.184 of this chapter. If any tenant or cooperative member regardless of age, or any other person 18 years of age or older who is occupying a unit as to which rent supplement payments are being made, is determined, in accordance with Part 200, Subchapter G, of this chapter to be an ineligible alien, rent supplement payments shall be terminated with respect to the unit as follows:

(i) In the case of a rental project:

(A) If the lease by its terms permits termination of assistance during the term of the lease due to failure to submit required documentation, assistance payments shall be terminated as of the effective date of recertification unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease (or, if the lease has not been terminated, upon failure of the tenant to pay the full amount due under the lease including the portion of the rent formerly provided through assistance payments), the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy.

(B) If the lease by its terms does not permit termination of assistance during the term of the lease due to failure to submit required documentation, no such lease contemplating assistance shall be renewed or extended after the first expiration date of the lease occurring on or after the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease, the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy. Rental supplement assistance payments shall terminate with respect to the unit upon commencement of an unassisted lease or upon termination of the tenancy, whichever shall first occur.

(ii) In the case of a cooperative project, the portion of rent supplement assistance allocable to the unit shall terminate as of the effective date of the recertification and the charges of the cooperative member under the occupancy agreement shall be increased by the amount of such terminated assistance as of such date, unless the person or persons determined to be ineligible have vacated the unit on or before that date.

(3) In the case of any occupant of a rental unit who is identified as a nonimmigrant student alien (as defined in § 200.181 of this chapter) at any time after November 17, 1981, but prior to the first date when satisfaction of the requirements of § 200.182 of the part is required under the provisions of § 200.184 of the part, the benefits of rent supplement payments shall continue to be available only until expiration of the current lease term. When the lease of a nonimmigrant student alien terminates after November 17, 1981, but before such time as the provisions of paragraph (b)(2) of this section become applicable to such person or persons by its terms, the alien shall have the option of vacating the unit or (subject to compliance by such alien with all other conditions of continued occupany of the unit) entering into a new lease without the benefit of rent supplement payments. The provisions of paragraph (b)(2) of this section shall be applicable to any nonimmigrant student alien from and after the date when paragraph (b)(2) becomes effective as to such person by its terms.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

§ 235.5 [Amended]

5. § 235.5(g) is removed.

§ 235.10 [Amended]

6. § 235.10(e) is removed.

7. § 235.13 is added, to read as follows:

§ 235.13 Ineligible alien mortgagors and cooperative members.

(a) On and after (insert effective date of this rule), a mortgagor or cooperative member shall not be eligible to receive the benefit of assistance payments at the time of (1) application for assistance, (2) purchase of a cooperative membership, (3) assumption of a mortgage, (4) commencement of foreclosure relief pursuant to 24 CFR Part 203 Subpart C, §§ 203.640 or 203.645, or (5) request for reinstatement unless the requirements of § 200.182 of this chapter are satisfied as to the mortgagor or cooperative member regardless of age, and any other person

18 years of age or older who will or does occupy the property or cooperative unit.

(b) When any event specified in Paragraph (a) of this section occurs on or after (insert effective date of this rule), the mortgagee shall require all persons described in Paragraph (a) of this section to furnish the documentation required pursuant to §§ 200.182 and 200.183 of this chapter and shall certify to the Secretary that, based upon the mortgagees's review of such documentation, all such persons are eligible. If, at the time of such event, the mortgagee cannot make such a certification because one or more of such persons is an ineligible alien, the mortgagee shall notify the mortgagor or cooperative member of its ineligibility for such financial assistance payments under this part until it has demonstrated to the mortgagee that no ineligible alien will or does occupy the property or cooperative unit.

(c) Commitments to insure mortgages under this part will not be issued or be renewed after (insert effective date of this rule) unless the mortgagee has made the certification required in Paragraph (b) of this section.

§ 235.325 [Amended]

8. Section 235.325(c) is removed.

§ 235.375 [Amended]

9. § 235.375(a)(1) is amended by removing the second sentence.

10. § 235.375(a)(5) is removed.

11. § 235.375(e) is amended by removing the last sentence.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

§ 236.2 [Amended]

12. § 236.2(l) is removed.

13. § 236.70 (a) and (d) are revised to read:

§ 236.70 Occupancy requirements.

(a) *Initial occupancy.* (1) Initial occupancy in a project by tenants or cooperative members who will be charged less than the fair market rental or fair market carrying charge shall be restricted to individuals and families which the mortgagor determines meet the income requirements established by the Commissioner.

(2) On or after [insert effective date of this rule], initial occupancy under Paragraph (1) of this subsection shall be further restricted to individuals or families as to whom the requirements of § 200.182 of this chapter have been satisfied.

* * * * *

(d) *Ineligible aliens.* (1) The charging of a monthly rental charge of less then the fair market rental shall be permitted on or after [insert effective date of this rule] only to an individual or family as to which the requirements of § 200.182 of this chapter have been satisfied, except to the extent that satisfaction of such requirements is extended to a later date under the provisions of § 200.184 of this chapter. If any tenant or cooperative member regardless of age, or any other person 18 years of age or older who is occupying a unit as to which monthly rental charge of less than the fair market rental is being charged, is determined in accordance with Part 200, Subchapter G, of this chapter to be an ineligible alien, such assistance shall be terminated with respect to the unit as follows:

(i) In the case of a rental project:

(A) If the lease by its terms permits termination of assistance during the term of the lease due to failure to submit required documentation, assistance payments shall be terminated as of the effective date of recertification unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupany, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease (or, if the lease has not been terminated, upon failure of the tenant to pay the full amount due under the lease including the portion of the rent formerly provided through assistance payments), the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy.

(B) If the lease by its terms does not permit termination of assistance during the term of the lease due to failure to submit required documentation, no such lease contemplating assistance shall be renewed or extended after the first expiration date of the lease occurring on or after the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of housing assistance payments contract, the owner, at its election may offer to enter into a lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease, the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy. Rental assistance payments shall terminate with respect to the unit upon commencement of an unassisted lease or upon termination of the tenancy, whichever shall first occur.

(ii) In the case of a cooperative project, no occupancy agreement providing for charges at less than the fair market rental shall be renewed or extended as of the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date.

(2) In the case of any occupant of a rental unit for which the monthly rental charge is less than the fair market rental is identified as a nonimmigrant student alien (as defined in § 200.181 of this chapter) at any time after November 17, 1981, but prior to the first date when satisfaction of the requirements of § 200.182 of this chapter is required under the provisions of § 200.184 of this chapter, the benefits of such reduced rental charge shall continue to be available only until expiration of the curent lease term. When the lease of a nonimmigrant student alien terminates after November 17, 1981, but before such time as the provisions of Paragraph (d)(1) of this section become applicable to such person or persons by its terms, the alien shall have the option of vacating the unit or (subject to compliance by such alien with all other conditions of continued occupancy of the unit) entering into a new lease providing for payment of a monthly rental charge equal to the fair market rental. The provisions of paragraph (d)(1) of this section shall be applicable to any nonimmigrant student alien from and after the date when paragraph (d)(1) becomes effective as to such person by its terms.

14. In § 236.710 the letter (a) is inserted before the introductory paragraph, the present paragraphs (a) and (b) are redesignated (1) and (2) respectively, paragraph (c) is revoked, and a new paragraph (b) is added to read as follows:

§ 236.710 Qualified tenant.

* * * * *

(b)(1) The benefit of rental asistance payments shall be available on or after (insert effective date of rule) only to an individual or family as to which the

requirements of § 200.182 of this chapter have been satisfied, except to the extent that satisfaction of such requirements is extended to a later date under the provisions of § 200.184 of this chapter. If any tenant or cooperative member regardless of age, or any other person 18 years of age or older who is occupying a unit as to which rental assistance payments are being made, is determined in accordance with Part 200, Subchapter G, of this chapter to be an ineligible alien, rental assistance payments shall be terminated with respect to the unit as follows:

(i) In the case of a rental project:

(A) If the lease by its terms permits terminations of assistance during the term of the lease due to failure to submit required documentation, assistance payments shall be terminated as of the effective date of recertification unles the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without asistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease (or, if the lease has not been terminated, upon failure of the tenant to pay the full amount due under the lease including the portion of the rent formerly provided through assistance payments), the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy.

(B) If the lease by its terms does not permit termination of asistance during the term of the lease due to failure to submit required documentation, no such lease contemplating assistance shall be renewed or extended after the first expiration date of the lease occurring on or after the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to a compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease, the owner shall take appropriate action to terminate the tenancy in accordance with 24 CFR Part 450. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy. Rental assistance payments shall terminate with respect to the unit upon commencement of an unassisted lease or upon termination of the tenancy, whichever shall first occur.

(ii) In the case of a cooperative project, the portion of rental assistance payments allocable to the unit shall terminate as of the effective date of the recertification and the charges of the cooperative member under the occupancy agreement shall be increased by the amount of such terminated assistance as of such date, unless the person or persons determined to be ineligible have vacated the unit on or before that date.

(2) In the case of any occupant of a rental unit who is identified as a nonimmigrant student alien (as defined in § 200.181 of this chapter) at any time after November 17, 1981, but prior to the first date when satisfaction of the requirements of § 200.182 of this chapter is required under the provisions of § 200.184 of this chapter, the benefits of rental assistance payments shall continue to be available only until expiration of the current lease term. When the lease of a nonimmigrant student alien terminates after November 17, 1981, but before such time as the provisions of paragraph (b)(1) of this section become applicable to such person or persons by its terms, the alien shall have the option of vacating the unit or (subject to compliance by such alien with all other conditions of continued occupancy of the unit) entering into a new lease without the benefit of rental assistance payments and providing for a monthly rental charge equal to the fair market rental. The provisions of paragraph (b)(1) of this section shall be applicable to any nonimmigrant student alien from and after the date when paragraph (b)(1) becomes effective as to such person by its terms.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS: OCCUPANCY BY SINGLE PERSONS

15. Section 812.1 is revised to read as follows:

§ 812.1 Purpose and scope.

The purpose of this part is to establish a definition of the term Family and other related terms applicable to all housing assisted under the United States Housing Act of 1937 (the Act). In addition, this part prescribes criteria and procedures for occupancy in lower-income housing assisted under the Act by Single Persons who are not otherwise eligible by reason of qualification as an Elderly Family or as a Displaced Person or as the remaining member of a tenant family. This part also contains the provisions relating to the prohibition against providing assistance under the Act to ineligible aliens. This part is applicable to all housing assisted under the Act.

16. Section 812.2 is revised by amending paragraphs (d) and (g) and adding paragraphs (h), (i), (j), and (k), to read as follows:

§ 812.2 Definitions.

* * * * *

(d) *Family.* "Family" includes but is not limited to (1) an Elderly Family or Single Person as defined in this Part, (2) the remaining member of a tenant family, and (3) a Displaced Person. On or after (insert effective date of rule), Family members who are tenants, cooperative members or homebuyers regardless of their ages, or any other occupant of the unit who is 18 years of age or older, shall not be ineligible aliens except to the extent that satisfaction of the requirements of § 812.5 of this part is extended to a later date by the provisions of § 812.7 of this part. In accordance with § 812.8 of this part, assistance under the Act shall be denied to ineligible aliens as defined in paragraph (h) of this section.

* * * * *

(g) *Eligible alien.* An eligible alien is an alien who establishes, in the manner provided in § 812.5, that he or she is:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by Sections 101(a)(15) and (101)(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 1101(a)(20)), excluding, among others, alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residences in a foreign country;

(2) An alien who entered the United States prior to June 30, 1948, or such subsequent date as enacted by law, has continuously maintained his/her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to Section 249 of the Immigration and Nationality Act (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or pursuant to the granting of asylum (which has not been terminated), under Section 208 of such Act (8 U.S.C. 1158);

(4) An alien who is lawfully present in the United States as a result of being granted conditioinal entry pursuant to Section 203(a)(7)) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(5) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)); or

(6) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)).

(h) *Ineligible alien.* An ineligible alien is an alien who fails to establish, in the manner prescribed by § 812.5 of this part, that he or she is an eligible alien.

(i) *Citizen.* A citizen of the United States.

(j) *Nonimmigrant Student-Alien.* Nonimmigrant student-alien means an alien having a residence in a foreign country which he/she has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who is admitted to the United States as a nonimmigrant alien as defined in Section 101(a)(15)(F)(i) and (M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i) and (M)), temporarily and solely for the purpose of pursuing such a full course of study at an established institution of learning or other recognized place of study in the United States. Nonimmigrant student-alien also means the alien spouse and minor children of such student if accompanying him/her or following to join him/her.

(k) *Verification consent form.* A document prescribed by the Department of Housing and Urban Development (Department) which provides that (1) the form itself, (2) copies of citizenship or alien status documents or information contained therein, and (3) other information furnished by or for any person claiming to be a citizen or eligible alien shall, upon request, be made available to the Department, which may release any or all such documents or information to other Federal, State or local government agencies, including the Social Security Administration and the Immigration and Naturalization Service, for verification purposes. Further, the form shall provide that any such government agency may release any information or documents relating to the verification of citizenship or alien status to the Department.

17. §§ 812.5 through 812.8 are added, as follows:

§ 812.5 Evidence of citizenship or eligible alien status.

(a) *Requirements for documentation.* When required pursuant to § 812.7 of this part, applicants for the benefit of assistance, and tenants receiving the benefit of assistance pursuant to the Act, shall furnish documentary evidence of citizenship or eligible alien status as required by this section and accompanying signed verification consent forms for themselves regardless of their ages, and for all other persons 18 years of age or older who will or do occupy a housing unit assisted under the Act. Failure to provide documentary evidence and verification consent forms required by this section shall result in denial or termination of assistance in accordance with this part. For purposes of this part, assistance is deemed to be made for the benefit of a person if such person (1) is an occupant of a dwelling unit in a public housing project as defined in the Act (including Section 23 Leased Housing); (2) is an occupant of a dwelling unit covered by a housing assistance payments contract under Section 8 of the Act.; (3) is an occupant of a dwelling unit covered by a housing assistance payments contract under Section 23 of the Act and Part 800 of this chapter; or (4) is a homebuyer as defined in Part 804 or Part 805 of this chapter. (Approved by the Office of Management and Budget under OMB control number 2502-0204).

(b) *Citizenship status.* (1) Each person claiming to be a citizen shall produce the original or a certified copy of one of the following documents to evidence citizenship:

(i) U.S. Passport;

(ii) Birth Certificate;

(iii) Consular Report of Birth;

(iv) Naturalization Certificate;

(v) Certificate of Citizenship;

(vi) U.S. Citizenship Identification Card (INS form I-197);

(vii) Commuter Status Card (INS form I-178);

(viii) Military Discharge Form (DD214);

(ix) Selective Service Certificate of Registration (Form SSS2);

(x) Baptismal or other religious certificate which provides evidence of birth in the United States and was created within one year of birth;

(xi) Documentation which is issued by the Bureau of Indian Affairs and which indicates membership in a Federally recognized tribe; or

(xii) Voter registration card.

(2) If none of the above documents can be obtained and a person claiming to be a citizen can provide a reasonable explanation or can demonstrate a good faith effort to obtain such document(s), the person may submit a signed statement from a third party who can produce one of the above documents to demonstrate that he/she is a citizen. The third party must, under penalty of perjury attest or affirm that the person for whom documentation is unavailable is a citizen.

(c) *Eligible alien status.* (1) Each person claiming to be an eligible alien shall produce in original form one of the following documents to evidence eligible status:

(i) Form I-151, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I-551, Alien Registration Receipt Card (for permanent resident aliens);

(iii) Form I-181B, Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence (for permanent resident aliens);

(iv) Form AR-3a, Alien Registration Receipt Card (Issued during 1941-1949 for permanent resident aliens);

(v) Form I-94, Arrival-Departure Record (Annotated either "Section 207" or "Refugee," or "Section 208" or "Asylum");

(vi) Form I-94, Arrival-Departure Record—Parole Edition (Annotated "Section 212(d)(5)," or "Conditional Entry" or "Section 203(a)(7)"); or

(vii) Form I-94, Arrival-Departure Record (Annotated "Section 243(h)").

(2) The following documents are not acceptable evidence of eligible alien status:

(i) Form I-94, Arrival-Departure Record: Annotated with any codes "A" through "L" for Non-Immigrants (for temporary resident aliens);

(ii) Form I-95A, Crewman's Landing Permits (for alien visitors);

(iii) Form I-144, Mexican Border Visitors Permit;

(iv) Form I-185, Nonresident Alien Canadian Border Crossing Card;

(v) Form I-186, Nonresident Alien Mexican Border Crossing Card;

(vi) Unnumbered form, Nonresident Alien Canadian Border Crossing Identification Card; or

(vii) Any Foreign issued Visa.

(d) *Responsibility for documentation.* Applicants and tenants shall be responsible for providing all documentation required for themselves and all others for whom documentation is required pursuant to paragraph (a) of this section. A photocopy of each document (or the original if released by such person) and a signed verification consent form shall be retained by the owner or PHA, as appropriate except that a photocopy need not be made or retained of any document bearing an identifying serial number if a record of such serial number and other necessary identifying information is made and retained in such manner as shall be prescribed by the Department. (Approved by the Office of Management and Budget under OMB control number 2502–0204).

(e) *Disclosure.* Documents and information evidencing or pertaining to citizenship or alien status, including the verification of such status, furnished to the owner or PHA, as appropriate, by or for the benefit of persons described in this section or by Federal, State or local government agencies shall be deemed to have been submitted in confidence. All such documents and information shall be safeguarded appropriately to restrict their use or disclosure by such owner or PHA only to persons directly connected with the verification of such status or the administration or enforcement of the financial assistance programs set forth in this chapter.

§ 812.6 Notice of Requirements.

(a) Notice of the requirements for documentation of citizenship or alien status prescribed in § 812.5 of this part (including the requirements as to verification consent forms) shall be furnished (1) to each applicant for the benefit of assistance (as defined in 812.5(a) of this part) who makes application therefor, or whose application therefor is pending or approved subject to certification of eligibility or income for initial occupancy, on or after [insert effective date of this rule], and (2) to each tenant receiving the benefit of assistance in occupancy at [insert effective date of this rule], or whose eligibility for the benefit of assistance and income has been certified pending occupancy at [insert effective date of this rule]. Such notice shall describe the documentation required (including the circumstances under which the alternative documentation described in § 812.5(b)(2) of this part may be provided), the times when such documentation shall be required (including applicable requirements regarding production of documentation upon recertification), and the consequences of failure to satisfy such requirements, and shall be given in a form prescribed by, or complying with instructions issued by, the Department. Such notice shall be given by the PHA for Public Housing (including Section 23 Leased Housing and Turnkey III), Section 8 Existing Housing (Part 882), Section 8 Moderate Rahabilitation, and Section 23 Housing Assistance Payments program, and by the owner for all other Section 8 assisted housing.

(b)(1) The notice described in paragraph (a) of this section shall, in the case of tenants in occupancy at [insert effective date of this rule], be given to all such persons within 30 days after receipt by the PHA or owner, as applicable, of the Department's instructions regarding the form of such notice.

(2) The notice described in paragraph (a) of this section shall, in the case of applicants whose applications have, as of [insert effective date of this rule], been pending or approved subject to certification of eligibility or income for initial occupancy at such date, be given to all such persons within 60 days of their anticipated entry into a housing unit.

§ 812.7 Implementation.

(a) Applications for the benefit of assistance shall not be approved, and eligibility or income shall not be certified for initial occupancy, on or after [insert effective date of this rule] without satisfaction of the requirements of § 812.5 of this part.

(b) PHAs and owners, as applicable, shall require satisfacion of the requirements of §812.5 of this part upon each recertification of income by a tenant receiving the benefit of assistance occurring on or after [insert effective date of this rule], except that (1) documentation of citizenship status shall not be required as to any citizen more than once during continuous occupancy by such person, (2) such documentation shall not be required in connection with any recertification effective less than 60 days after the notice required by § 812.6 of this part shall have been furnished to the tenant, (3) this subsection shall not be applicable to homebuyers who entered into Homeownership Opportunity Agreements or Mutual Help and Occupancy Agreements prior to [insert effective date of this rule].

§ 812.8 Termination of Assistance to Ineligible Alien.

(a) The benefit of assistance shall be available on or after [insert effective date of rule] only to a Family as to which the requirements of § 812.5 of this part have been satisfied, except to the extent that satisfaction of such requirements is extended to a later date under the provisions of § 812.7 of this part. If any tenant regardless of age, or any other person 18 years of age or older who is occupying an assisted unit, is determined in accordance with §§ 812.5 and 812.7 of this part to be an ineligible alien, assistance shall be terminated as provided in Paragraph (b) of this section.

(b)(1) With respect to public housing as defined in the Act, no lease shall be renewed or extended after the first expiration date of the lease occurring on or after the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date. The PHA shall take appropriate action to terminate the tenancy in accordance with Part 886 of this chapter. Notwithstanding any other provisions of the lease or of this chapter, ineligible alien status shall be deemed "good cause" for termination of the tenancy.

(2) With respect to Section 8 Existing and Moderate Rehabilitation housing programs developed and operated pursuant to Part 882 of this chapter, the PHA shall terminate the Housing Assistance payments as of the effective date of recertification or as soon thereafter as permitted by the terms of the Housing Assistance Payment Contract unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the case of Section 8 Existing Housing, subsequent to the termination of assistance, the occupancy of the tenant shall not be considered to be pursuant to an Assisted Lease to which § 882.215 of this chapter is applicable. In the case of Section 8 Moderate Rehabilitation, in the absence of a new unassisted lease (or, if the Section 8 lease has not been terminated, upon failure of the tenant to pay the full amount due under the lease

including the portion of the rent formerly provided through assistance payments), the owner may take appropriate action to terminate the tenancy in accordance with § 882.511 of this chapter, in which event no provision of such section shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy.

(3) With respect to all other housing assisted under the Act other than public housing as defined in the Act:

(i) If the lease by its terms permits termination of assistance during the term of the lease due to failure to submit required documentation, assistance payments shall be terminated as of the effective date of recertification unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease (or, if the lease has not been terminated, upon failure of the tenant to pay the full amount due under the lease including the portion of the rent formerly provided through assistance payments), the owner shall take appropriate action to terminate the tenancy in accordance with applicable provisions of this chapter. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy.

(ii) If the lease by its terms does not permit termination of assistance during the term of the lease due to failure to submit required documentation, no such lease contemplating assistance shall be renewed or extended after the first expiration date of the lease occurring on or after the effective date of recertification, unless the person or persons determined to be ineligible have vacated the unit on or before that date. Subject to compliance by the tenant with all other conditions of continued occupancy, and to the terms of the housing assistance payments contract, the owner, at its election, may offer to enter into a new lease without assistance upon such terms and conditions as shall be agreed between the owner and tenant. In the absence of such new lease, the owner shall take appropriate action to terminate the tenancy in accordance with applicable provisions of this chapter. No provision of the lease or of this chapter shall be construed to prevent the owner, at its election, from considering ineligible alien status to constitute "good cause" for termination of the tenancy. Assistance payments shall terminate with respect to the unit upon commencement of an unassisted lease or upon termination of the tenancy. Assistance payments shall terminate with respect to the unit upon commencement of an unassisted lease or upon termination of the tenancy, whichever shall first occur.

(c) In the case of any occupant of a unit who is identified as a nonimmigrant student alien (as defined in § 812.1 of this part) at any time after November 17, 1981, but prior to the first date when satisfaction of the requirements of § 812.5 of this part is required under the provisions of § 812.7 of this part, the benefit of assistance shall continue to be available only until expiration of the current lease term. When the lease of a nonimmigrant student alien (other than one occupying public housing as defined in the Act) terminates after November 17, 1981, but before such time as the provisions of paragraph (b) of this section becomes applicable to such person or persons pursuant to paragraph (a) of this section, the alien shall have the option of vacating the unit or (subject to compliance by such alien with all other conditions of continued occupancy of the unit) entering into a new lease without the benefit of assistance. When the lease of a nonimmigrant student alien residing in public housing terminates after November 17, 1981, the public housing authority shall require the tenant to vacate the unit. The provisions of paragraph (b) of this section shall be applicable to any nonimmigrant student alien from and after the date when paragraph (b) of this section becomes effective as to such person pursuant to paragraph (a) of this section.

(Section 214, Housing and Community Development Act of 1980, as amended by Section 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: September 23, 1982.

Philip Abrams,

General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 82-27106 Filed 10-1-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

Environmental Quality; Environmental Effects of Army Actions

AGENCY: Department of the Army, DOD.

ACTION: Interim rule with request for comments.

SUMMARY: This document amends the Department of the Army's procedures implementing the National Environmental Policy Act. This change is provided to clarify procedures and policies as a result of experience gained since the initial issue of this regulation; to eliminate the requirement for a Record of Environmental Consideration for selected Categorical Exclusions; to eliminate the requirement for ongoing operation environmental documentation; to allow for Major Command (MACOM) processing of selected environmental impact statements; to change and clarify several Categorical Exclusions; and to add one new Categorical Exclusion.

DATE: Effective date: October 4, 1982.

Comment date: Comments must be received on or before November 3, 1982.

ADDRESS: Send comments to Army Environmental Office, Office, Assistant Chief of Engineers, Room 1E 676, Pentagon, Washington, DC 20310, (202-694-3434).

FOR FURTHER INFORMATION CONTACT: Mr. Gary Robinson, Army Environmental Office, Office, Assistant Chief of Engineers, Room 1E 676, Pentagon, Washington, DC 20310, (202-694-3434).

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) have significant adverse effects on competition, employment, investment productivity, innovation or on the ability of a United States based enterprise to compete with foreign-based enterprises in domestic or export markets.

The purpose and effect of this amendment is to reduce unnecessary regulatory burdens on Army agencies

and officials. No increased paperwork burdens are imposed by the amendment.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Because this amendment is not "major," it is effective immediately as an interim final rule. It may be revised before becoming final if substantive comments are received by the Army Environmental Office within thirty (30) calendar days of the effective date.

Regulatory Analysis

Under E.O. 12291, the Department of the Army must determine if a regulation is "major" and therefore subject to a Regulatory Impact Analysis. Because the Department of the Army believes that this amendment is not "major," it is not subject to such an analysis.

List of Subjects in 32 CFR Part 651

Environmental protection, Administrative practice and procedure, Environmental impact statement.

John O. Roach II,

DA Liaison Officer with the Office of the Federal Register.

PART 651—ENVIRONMENTAL CONSIDERATION OF ARMY ACTIONS (AR 200–2)

For the reasons set out in the preamble, 32 CFR Part 651 is amended as set forth below:

§ 651.1 [Amended]

1. Section 651.1 is amended by inserting (EO) after Executive Order.

2. Section 651.3 is amended by revising paragraph (c) and adding paragraph (e) as follows:

§ 651.3 Applicability.

* * * * *

(c) This regulation also applies to proposals and activities of the Army National Guard which involve Federal funding and/or National Guard Bureau approval.

* * * * *

(e) Combat or combat-related activities in a combat zone are not subject to this regulation.

3. Section 651.4 is amended by adding an undesignated paragraph preceding paragraphs (a) and by revising paragraph (a) and (d) to read as follows:

§ 651.4 Policies.

It is the continuing policy of DA to serve as a trustee of the environment. In order to accomplish this policy, DA will:

(a) Carry out its mission of national security in a manner consistent with NEPA and other applicable standards, laws, and policies. All practicable means consistent with other essential consideration of national policy should be employed to minimize or avoid adverse environmental consequences and to attain the goals and objectives in sections 101 and 102 of NEPA. Environmental considerations will be integrated into the decisionmaking process insuring that:

(1) Major decision points are designated for principal programs and proposals likely to have a significant effect on the quality of the human environment, and steps are taken to ensure that the NEPA process coincides with these decision points.

(2) Relevant environmental documents, comments and responses accompany the proposal through existing Army review processes so that officials use them in making decisions. The requirements of NEPA will be integrated with other planning and environmental review procedures required by law or Army practice so that environmental considerations are reviewed concurrently rather than consecutively.

(3) The alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in relevant environmental documents, and the decisionmaker considers all the alternatives described in the environmental document.

* * * * *

(d) Insure that all appropriate environmental documentation is subjected to reviews which consider operations and security (OPSEC) principles and procedures described in AR 530–1. These reviews will be documented on the cover sheet or signature page.

4. Section 651.5 is amended by revising paragraphs (c)(2), (f) and (j); by adding paragraphs (b)(11) and (c)(10); by removing and reserving (c)(8) and (g); and by amending (b)(7) by adding the phrase "and Records Service, GSA" to the last sentence to read as follows:

§ 651.5 Responsibilities.

* * * * *

(b) * * *

(11) Resolve issues in determining if a public hearing is appropriate for the proposed action and assign, when necessary, the responsibility for the hearing to an appropriate office.

(c) * * *

(2) Assess proposed programs and actions to determine their environmental consequences and initiate the preparation of necessary environmental documentation. Environmental documents such as the DD Form 1391 (Military Construction Project Data), Case Study and Justification Folder, Integrated Program Summary, feasibility, and alternative analysis studies. * * *

(8) [Reserved] * * *

(10) Prepare and maintain Record of Decision documents for action for which they are the staff proponent. * * *

(f) The Surgeon General (TSG) is responsible for coordinating the environmental review related to health and welfare aspects of proposed EISs submitted to HQDA, and for preparing EAs or EISs for proposed actions and programs for which he/she is the proponent. DA agencies are encouraged to draw upon the special expertise which is available within the medical department, including the US Army Environmental Hygiene Agency, to identify and evaluate environmental impacts.

(g) [Reserved] * * *

(j) All Army commands and agencies will: (1) Establish, as necessary, internal procedures for analyzing environmental consequences of continuing and proposed actions and programs which would implement their mission and/or function and for preparing and coordinating within their technical staffs, and processing environmental documentation required for proposed actions and programs.

(2) Establish, as necessary, internal procedures to insure that proposed regulations, directives, instructions, and other major policy publications which implement their function or which implement issuances by higher headquarters, are evaluated for environmental consequences prior to publication.

(3) Maintain the capability (in terms of personnel, training, and other resources) to comply with this regulation (40 CFR 1507.2).

5. Section 651.6 paragraph (a) is revised to read as follows:

§ 651.6 Summary of required records and documents.

* * * * *

(a) Record of Environmental Consideration (REC). See subpart C for application.

* * * * *

5a. Section 651.7 is amended by revising paragraphs (e), (f), (g), introductory text, and by revising the paragraph designated "b" in Table 2–1 to read as follows:

§ 651.7 Definitions.

* * * * *

(e) *HQDA Staff Proponent.* The principle planner, implementer, and/or decision authority for a proposed action.

(f) *Proponent.* Since proponent identification is dependent on the nature and scope of any given action, a proponent may exist at all levels of the Army structure, e.g., the installation facility engineer becomes proponent of installation-wide MCA MCA or O&M activity, HQ TRADOC becomes a proponent of a change in initial entry training. In general, the proponent is the lowest level decisionmaker and has the responsibility to prepare the environmental documentation because the knowledge of all aspects of the action and the ability to modify the planned actions to minimize impacts exists at this and/or approval by higher level authorities including the HQDA staff proponent; therefore, the review/approval of the environmental document follows the same channel of review/approval as that of the proposed action.

(g) *Environmental documents.* Record of Environmental Consideration, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact and Notice of Intent. A public record of Decisions required by 40 CFR 1505.2 but is not considered to be an environmental document because other factors are considered in the decision.

Figure 2–1 Format for Record of Environmental Consideration

* * * * *

b. Qualifies for Categorical Exclusion —— appendix A, AR 200–2 and no extraordinary circumstances exist as defined in paragraph 651.16.

6. In § 651.8, paragraph (d), the first sentence is revised as follows:

§ 651.8 General.

* * * * *

(d) These procedures are designed to allow the decisionmaker to select a reasonable course of action by providing the relevant background information and subsequent analyses of positive and negative environmental effects of the proposal. * * *

7. In § 651.9, paragraphs (a)(4) and (b)(3) are revised as follows:

§ 651.9 Applicability.

(a) * * *

(4) Proposed new activities (e.g., individual and unit training, flight operations, etc.)

(b) * * *

(3) Approval to use or store materials, radiation sources or wastes on Army land by non-Army entities. The responsibility to prepare environmental assessments is that of the non-Army requestor. If an EIS is required, the requestor will provide needed information for the Army preparation of the EIS. All environmental documentation will be reviewed and approved by the Army activity before initiating the request.

8. Section 651.10 is amended by revising paragraphs (a)(2)(i), (3); and (4)(ii) as follows:

§ 651.10 Categories of actions and procedures for environmental review.

(a) * * *

(2) * * *

(i) In the event of an emergency, DA may be required to take immediate actions with significant environmental impact. These include actions that must be taken to promote the national defense or security and cannot be delayed, and actions necessary for the protection of life or property. The DA staff proponent shall notify OCE (DAEN–ZCE) who will then notify OASA(IL&FM) and the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) of an emergency action at the earliest possible time.

* * * * *

(3) Categorical Exclusions (CX) (subpart D and App A). These actions normally do not require an EA or an EIS because DA has determined that they do not individually or cumulatively have a significant effect on the human environment. If qualifications are met for a CX, as described in subpart D of this Part, a Record of Environmental Consideration may be required.

(4) * * *

(ii) If the proposed action is within the general scope of an existing EIA, EA, or EIS, but additional information is required, prepare a new assessment, incorporating by reference the existing document, and publish the conclusion (FNSI or NOI).

* * * * *

9. Section 651.11 is amended by revising paragraph (c) as follows:

§ 651.11 Classified actions.

* * * * *

(c) Classification does not relieve a proponent of the necessity to assess the environmental effects of the proposed action. The HQDA staff proponent, in coordination with OCE (DAEN–ZCE) and OACSI, may select a review team from DA agency(ies) or office(s) not connected with the proponent agency, or from outside DA, in order to provide an external review of classified environmental documents.

10. Section 651.12 is amended by adding a new paragraph (a); current paragraphs (a) through (e) are redesignated (b) through (f) respectively; by further revising newly redesignated paragraphs (b)(2) (ii) and (iv), (3), (d)(3), (e)(6) and Figure 3–2. Newly redesignated paragraph (b)(4)(i) is amended by adding the phrase, "is unprecedented", after the word "concern" and preceding the word "or"; newly redesignated paragraph (b)(4)(ii) is amended by revising the last sentence. Newly redesignated paragraph (c) is amended by removing the word "shall" wherever it occurs in paragraph (1) and by removing the words "major" and "development" whenever they occur in paragraph (2). The newly redesignated paragraph (d)(2) is amended by removing the word "importance" and replacing it with the word "interest".

§ 651.12 Integration with Army planning.

(a) It is the Army's goal that environmental considerations be integrated with and take place during other Army planning and decisionmaking actions in order to avoid delays in mission accomplishment. Environmental documents should be completed so that they may be included with any recommendation or report to the decisionmaker. The same documents should be forwarded to the planners, designers, and/or implementors so that recommendations and mitigations on which the decision was based may be carried out.

(b) * * *

(2) * * *

(ii) When variations to these time limits are set, the DA agency should consider the factors in 40 CFR 1501.8(b)(1). * * *

(iv) The entire EIS process could require more than one year. Most of this time is taken by the preparation of the DEIS and the revision and response to comments to prepare the FEIS. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the record of decision. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. After the availability of the Record of Decision is announced, the action may proceed. Figure 3–2 indicates typical and required time periods for EISs.

(3) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (see subpart D and App. A), the proponent may proceed immediately with the action unless a Record of Environmental Consideration (REC) is required. If the REC is required, the

proponent may proceed after receiving the concurrence of the designated environmental officer for the site of the proposed action.

(4) * * *

(ii) * * *

A deadine and point of contact for receipt of comments should be included in the announcement of the FNSI.

* * * * *

(d) * * *

(3) If the proponent desires to incorporate scoping in the public involvement or environmental review processes other than those required for an EIS, significant reduction in the extent of scoping incorporated is left to the proponent's discretion.

(e) * * *

(6) Stationing and installation planning, force development planning, and materiel acquisition planning.

* * * * *

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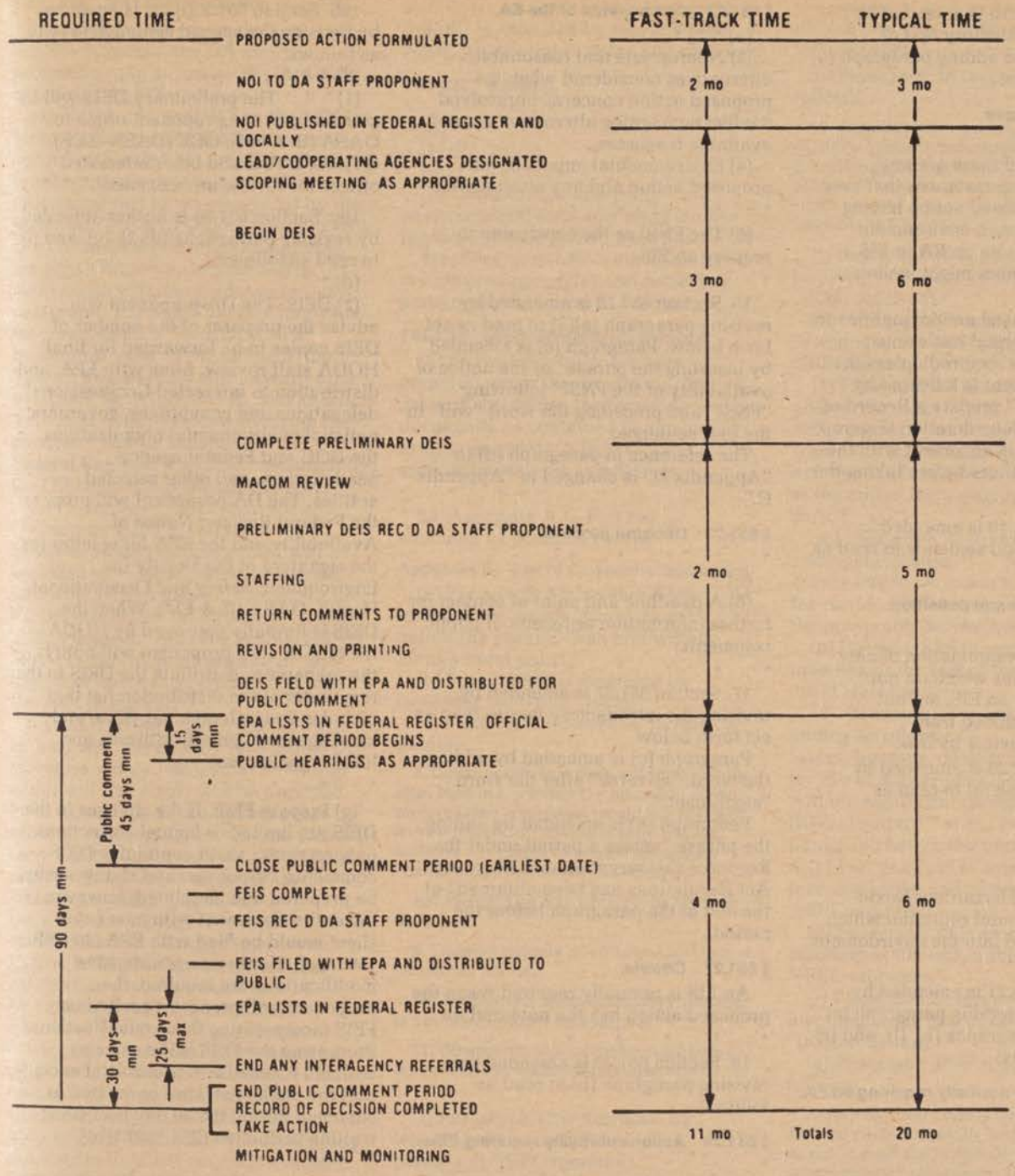

FIGURE 3-2. TIME RELATIONSHIPS FOR PREPARING AND PROCESSING AN EIS[1]

[1] These times are not firm and fixed but rather variable on a case-by-case basis due to e.g., the project or action scale, data collection requirements, other cooperating agencies, public hearings.

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11. Section 651.16 is amended by revising the introductory text of paragraph (b) and adding paragraph (c) to read as follows:

§ 651.16 Procedures.

* * * * *

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having impact on the human environment which would require an EA or EIS. These circumstances might include:

* * *

(c) If the proposed action qualifies for one of the categorical exclusions, nothing further is required unless the exclusion statement is followed by "(REC required)," prepare a Record of Environmental Consideration (Figure 2–1). Coordinate this document with the environmental officer before taking the action.

12. Section 651.19 is amended by revising the second sentence to read as follows:

§ 651.19 Purpose and definition.

* * * * *

The EA is the examination of new proposed activities which do not normally require an EIS, are not categorically excluded from environmental review by law. * * *

13. Section 651.20 is amended by revising paragraph (c) to read as follows:

§ 651.20 Criteria.

* * * * *

(c) Presence of hazardous/toxic chemicals or harmful radiation which could be released into the environment.

* * * * *

14. Section 651.21 is amended by removing and reserving paragraph (c) and revising paragraphs (k), (l), and (r) to read as follows:

§ 651.21 Actions normally requiring an EA.

* * * * *

(c) [Reserved]

* * * * *

(k) Development of significant changes to installation master plans, and land and natural resource management plans.

(l) Proposals which may lead to the excessing of Army property and are also environmentally controversial.

* * * * *

(r) Production of hazardous or toxic materials.

15. Section 651.22 is amended by revising paragraphs (a)(3), (4), and (6) to read as follows:

§ 651.22 Components of the EA.

(a) * * *

(3) Appropriate and reasonable alternatives considered when the proposed action concerns unresolved conflict concerning alternative uses of available resources.

(4) Environmental impact of the proposed action and any alternatives.

* * * * *

(6) The FNSI or the conclusion to prepare an EIS.

* * * * *

16. Section 651.23 is amended by revising paragraph (a)(5) to read as set forth below. Paragraph (c) is amended by inserting the phrase "or the notice of availability of the FNSI" following "FNSI" and preceding the word "will" in the first sentence.

The reference in paragraph (d) to "Appendix D" is changed to "Appendix C."

§ 651.23 Decision process.

* * * * *

(a) * * *

(5) A deadline and point of contact for further information or receipt of public comments.

* * * * *

17. Section 651.27 is amended by revising the introductory text to read as set forth below.

Paragraph (e) is amended by adding the word, "adverse" after the word "significant."

Paragraph (h) is amended by adding the phrase "unless a permit under the Resource Conservation and Recovery Act Regulations has been obtained" at the end of the paragraph before the period.

§ 651.27 Criteria.

An EIS is normally required when the proposed action has the potential to:

* * * * *

18. Section 651.28 is amended by revising paragraph (b) to read as follows:

§ 651.28 Actions normally requiring EISs.

* * * * *

(b) Construction of facilities which have a significant effect on wetlands, coastal zones, and other areas of critical environmental concern.

* * * * *

§ 651.30 [Amended]

19a. Section 651.30(a) is amended by revising the fourth sentence to read as follows:

(a) * * * The NOI will be coordinated with HQDA (DAEN–ZCE and SAPA–PP). * * *

* * * * *

19b. Section 651.30(d)(1) is amended by revising the second sentence to read as follows:

(d) * * *

(1) * * * The preliminary DEIS will be circulated by the proponent office to OASA (IL & FM), OCE (DAEN–ZCE), OTJAG, OTSG and other interested offices for review and comment.* * *

19c. Section 651.30 is further amended by revising paragraphs (d)(2), (g), and (i) to read as follows:

(d) * * *

(2) DEIS. The DA proponent will advise the preparer of the number of DEIS copies to be forwarded for final HQDA staff review, filing with EPA, and distribution to interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. The DA proponent will prepare the Federal Register Notice of Availability and the EPA filing letter for the signature of the Deputy for Environment, Safety and Occupational Health, OASA (IL & FM). When the DEIS is formally approved by HQDA, the HQDA staff proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list that includes Federal, regional, State and local agencies, private citizens, and local organization.

* * * * *

(g) Prepare FEIS. If the changes in the DEIS are limited to factual corrections, only an errata sheet containing DEIS comments, responses, and changes must be prepared and circulated; however, the entire document with new cover sheet would be filed with EPA (40 CFR 1503.4(c)). If other more extensive modifications are required, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is the same as outlined for the DEIS transmittal except that the public need not be invited to comment during the 30 day post-filing waiting period (40 CFR 1503.1(b)).

* * * * *

(i) Record of Decision. At the time of decision, or, if appropriate, its recommendation to Congress, the HQDA staff proponent will prepare a Record of Decision in accordance with 40 CFR 1505.2, and 1505.3, which will become a part of the environmental documentation presented for the final decision. A copy of the signed Record of Decision will be forwarded to HQDA (DAEN–ZCE) WASH DC 20310.

* * * * *

20. Section 651.31a is added to read as follows:

§ 651.31a MACOM Processing of an EIS.

In certain cases where the scope of the EIS is limited, the DA staff proponent may authorize the MACOM to process an EIS.

(a) *Notice of Intent.* When the NOI is forwarded to the DA Staff proponent in accordance with§ 651.30(a), the DA Staff proponent may determine the EIS processing will be accomplished by the MACOM. The NOI will be returned with any comments by a letter authorizing the MACOM to process the EIS in accordance with the guidance in this paragraph. The MACOM is responsible for preparation of the NOI with a transmittal letter to the Office of the Federal Register and will forward both to HQDA, DAAG–AMR–R, Alexandria, VA 22331. After a review to insure the document will be accepted by the **Federal Register,** it will be forwarded by the Office of The Adjutant General.

(b) *Preliminary DEIS.* When the Preliminary DEIS is staffed at the MACOM Headquarters, copies will be provided for concurrent review to the following HQDA elements to insure that HQDA interposes no objection: DAEN–ZCE (3 copies), JALS–RL, DASG–PSP–E, SPA–PP, the DA Staff proponent, and any other office recommended by the DA staff proponent.

(c) *EIS.* The Draft and Final EIS will be filed with the EPA by forwarding five (5) copies with a transmittal letter and additional five cipies will be provided for review to the EPA regional office affected by the proposed action. One (1) copy will be forwarded to OSD. HQDA copies will be the same as for the Preliminary DEIS. Copies for Congressional delegations and committees will be coordinated with HQDA(SALL) so that Congressional notification procedures are met. Remaining distribution will be to interested governors, Federal agency headquarters, national environmental organizations, regional, state and local agencies and organizations, and interested private citizens. The proponent is responsible for developing the distribution list; advice is available from HQDA (DAEN–ZCE).

A Notice of Availability may be published in the **Federal Register** by forwarding the notice with a transmittal letter by the same method used for the NOI.

(d) *Record of Decision.* At the time of decision, a Record of Decision will be prepared in accordance with 40 CFR 1505.2 and 1505.3. A copy of the Record of Decision will be provided to HQDA (DAEN–ZCE).

21. Section 651.33 is amended by revising paragraph (b)(1)(vi)(B) to read as follows set forth below. Paragraph (b)(2)(i) is amended by removing the word "appropriate" in the last sentence.

§ 651.33 Scoping.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B) Collection or analyzing environmental data, including studies required of cooperating agencies.

21a. Section 651.40 is amended by revising paragraph (a) and removing paragraph (c) to read as follows:

§ 651.40 Implementation guidance.

(a) Environmental documents prepared under the provisions of this subpart should use the format for such documents as contained in appendix F or as appropriate in light of the applicable statutes and SOFAs.

* * * * *

22. Appendix A to Part 651 is amended as set forth below:

Appendix A—List of Categorical Exclusions

(a) Paragraph 3 is amended by inserting the words, "forestry and" before the phrase, "fish and wildlife management plans,"

(b) Paragraph 6 is amended by removing the word, "local."

(c) Paragraph 7 is revised to read as follows:

7. Construction that does not significantly alter land use, provide the operation of the project when completed would not of itself have a significant environmental impact; includes out-grants to private lessees for similar construction. (REC. required).

(d) Paragraph 9 is revised to read as follows:

9. Training entirely of an administrative or classroom nature.

(e) Paragraph 11 introductory phrase, is revised to read as follows:

11. Operations conducted by established laboratories in enclosed facilities where:
* * *

(f) Paragraph 12 is amended by inserting at the end of the paragraph,"(REC required)."

(g) Paragraph 13 is revised to read as follows:

13. Routine movement of personnel; routine handling and distribution of non-hazardous and hazardous materials in conformance with DA, EPA, Department of Transportation and state regulations.

(h) Paragraph 14 is revised to read as follows:

14. Reduction and realignment of civilian and/or military personnel which fall below the thresholds for reportable actions as prescribed in AR 5–10. Conversion of commercial activities (CA) to contract performance of services from in-house performance under the provisions of DOD Directive 4100.15.

(i) Paragraph 16 is revised to read as follows:

16. Acquisition, installation and operation of utility systems and communication, data processing, cable systems and similar electronic equipment which use existing rights of way, easements, distribution systems, and facilities.

(j) Paragraph 18 is amended by inserting at the end of the paragraph, "(REC required)."

(k) Paragraph 20 is amended by inserting at the end of the paragraph, "(REC required)."

(l) Paragraph 21 is amended by adding the phrase, ". . . ; use of non-Army property for Army activities where the action is consistent with existing land use plans. (REC required)." at the end of the paragraph before the period.

(m) Paragraph 22 is amended by adding the phrase, ". . .; disposal of excess easement areas to the underlying fee owner. (REC required)." at the end of the paragraph before the period.

(n) Paragraph 23 is amended by inserting at the end of the paragraph, "(REC required)."

(o) Paragraph 24 is amended by adding the phrase, ". . . and grants of leases, licenses, permits and easements for use of excess or surplus property without significant change in land use. (REC required)." at the end of the paragraph before the period.

(p) Paragraph 25 is amended by inserting at the end of the paragraph, "(REC required)."

(q) Paragraph 26 is amended by inserting at the end of the paragraph, "(REC required)."

(r) Paragraph 27 is amended by inserting at the end of the paragraph, "(REC required)."

(s) Paragraph 28 is added to read as follows:

A–28. Proposed actions determined to be of such an environmentally insignificant nature as not to meet the threshold for requiring an environmental assessment. (REC required).

23. Appendix B to Part 651 is amended as set forth below:

Appendix B—Content of the EIS

(a) Paragraph 1 is amended by revising paragraph *(d) to read as follows:*

d. The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority(ies) in the command channel through HQDA Staff proponent.

* * *

(b) Figure B–1—Example Cover Sheet is modified in the paragraph entitled, "Approval" by removing "Director of Training, DA" and insert in lieu thereof "Director of program affected by EIS."

(Authority: National Environmental Policy Act of 1969 (WEPA); 42 U.S.C. 4321 et seq.)

[FR Doc. 82–27174 Filed 10–1–82; 8:45 am]
BILLING CODE 3710–08–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 1–1

[FPR Temp. Reg. 65]

Debarment, Suspension and Ineligibility of Government Contractors

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This FPR Temporary Regulation revises the policies and procedures in Subpart 1–1.6 on the debarment and suspension of Government contractors, and the issuance by GSA of a consolidated Government-wide list of debarred, suspended, and ineligible contractors. The basis for the temporary regulation is Policy Letter 82–1 which was issued by the Office of Federal Procurement Policy, on June 24, 1982, (47 FR 28854, July 1, 1982). The intended effect is to ensure that Government contracts are awarded to responsible contractors.

DATES: Effective date: This temporary regulation is effective September 30, 1982.

Expiration date: This temporary regulation expires September 30, 1984, unless revised or superseded earlier.

FOR FURTHER INFORMATION CONTACT: Mr. Philip G. Read, Director, Office of Federal Procurement Regulations, Office of Acquisition Policy, (202–523–4755).

AGENCY ACTION: Pending the publication of a permanent FPR amendment, agencies shall comply with the policies and procedures in this temporary regulation.

COMMENTS: Time did not permit the solicitation of comments prior to the issuance of this temporary regulation. Accordingly, those who wish to do so may submit comments during the 60 day period following the date of the temporary regulation.

List of Subjects in 41 CFR Part 1–1

Government procurement, Administrative practices and procedures, Environmental protection, Labor surplus area, Minority businesses, Recycled material and Small business.

PART 1–1 [AMENDED]

In 41 CFR Chapter 1, the following temporary regulation is added to the Appendix at the end of the chapter.

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

Federal Procurement Regulations Temporary Regulation 65

September 24, 1982.

To: Heads of Federal agencies

Subject: Debarment, Suspension, and Ineligibility of Government Contractors

1. *Purpose.* This temporary regulation prescribes policies and procedures applicable to the debarment and suspension of Government contractors, and provides for the listing of debarred, suspended, and ineligible contractors by the General Services Administration.

2. *Effective date.* This regulation is effective September 30, 1982.

3. *Expiration date.* This regulation expires September 30, 1984, unless revised or superseded earlier.

4. *Background.* Policies and procedures applicable to the debarment and suspension of Government contractors currently are prescribed in Subpart 1–1.6. The Office of Federal Procurement Policy issued Policy Letter No. 82–1, on June 24, 1982 (47 FR 28854, July 1, 1982), which prescribed revised policies and procedures, including the requirement that GSA issue a consolidated Government-wide list of those contractors. The temporary regulation implements the policy letter.

5. *Explanation of changes.* Subpart 1–1.6 is superseded by the policies and procedures prescribed in this temporary regulation.

6. *Agency action.* Pending the publication of a permanent FPR amendment, agencies shall comply with the policies and procedures in this temporary regulation.

7. *Comments requested.* Time did not permit the solicitation of comments prior to the issuance of this temporary regulation. Accordingly, those who wish to do so may submit comments during the 60 day period following the date of the regulation.

Attachment A FPR Temp. Reg. 65

September 24, 1982.

Subpart 1–1.6—Debarment, Suspension, and Ineligibility

§ 1–1.600 Scope of subpart.

(a) This subpart:

(1) Prescribes policies and procedures governing the debarment and suspension of contractors, for the causes given in §§ 1–1.605 and 1–1.606 for contracts involving personal property and non personal services, including construction and leases of real property.

(2) Provides for the listing of debarred and suspended contractors, and of contractors declared ineligible (see the definition of "ineligible" in § 1–1.602(j)); and

(3) Sets forth the treatment to be accorded to contractors listed as debarred or suspended, as well as those listed as having been declared ineligible.

§ 1–1.601 Policy.

(a) Agencies shall solicit bids and proposals only from, award contracts to, and approve or consent to subcontracts with, responsible business concerns and individuals. Debarment and suspension are discretionary actions which, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that they be imposed only in the public interest, for the Government's protection and not for purposes of punishment. Debarment and suspension shall be imposed to protect the Government's interest, and only for the causes and in accordance with the procedures set forth in this Subpart 1–1.6.

§ 1–1.602 Definitions.

(a) "Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) "Affiliates." Business concerns or individuals are affiliates if, directly or indirectly, (1) either one controls or can control the other; or (2) a third controls or can control both.

(c) "Agency" means executive agency (see § 1–1.202).

(d) "Consolidated List of Debarred, Suspended, and Ineligible Contractors" means a list compiled, maintained and distrtibuted by the General Services Administration (GSA), containing the names of contractors that have debarred or suspended by a Federal agency as well as contractors that have been declared ineligible pursuant to other regulatory or statutory authority.

(e) "Contractor" means any individual or other legal entity that: (1) submits bids or proposals for or is awarded, or reasonably may be expected to submit bids or proposals for or be awarded, a Government contract or a subcontract under a Government contract; or (2) conducts business with the Government as an agent or representative of another contractor.

(f) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, and includes a conviction entered upon a plea of *nolo contendere.*

(g) "Debarment" means action taken by a debarring official under § 1–1.605 to exclude a contractor from Government contracting and Government approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

(h) "Debarring Official" means the head of an agency or an official authorized by the head of the agency to impose debarment.

(i) "Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(j) "Ineligible" means exluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this subpart. For example, contractors excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Executive orders on Equal Employment Opportunity, the Walsh-Healey Public Contracts Act, the Buy American Act, and the environmental protection acts and Executive orders are "ineligible."

(k) "Legal proceedings" means any civil judicial proceeding to which a State or the Federal Government is a party of any criminal proceeding. The term also includes appeals from such proceedings.

(l) "Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(m) "Suspending Official" means the head of the agency concerned or an official authorized by the head of the agency to impose suspension.

(n) "Suspension" means action taken by a suspending official under § 1–1.606 to disqualify a contractor temporarily from Government contracting; a contractor so disqualified is "suspended."

§ 1–1.603 Establishment and maintenance of a list of debarred, suspended, and ineligible contractors and agency records.

§ 1–1.603–1 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

(a) GSA shall—

(1) Compile and maintain a current, consolidated list of contractors debarred, suspended, or declared ineligible by agencies or by the General Accounting Office;

(2) Revise and distribute the list to agencies and the General Accounting Office; and

(3) Provide with the list the name and telephone number of the official responsible for the maintenance and distribution of the list.

(b) Each agency shall—

(1) Notify GSA, within 5 working days after debarring or suspending a contractor or modifying or rescinding such an action, of the information set forth in § 1–1.603–2.

(2) Notify GSA of the names and addresses of the organizations within the agency that are to receive the consolidated list and the number of copies to be furnished to each; and

(3) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(4) Establish procedures to provide for the effective use of the list to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with, listed contractors, except as provided in this Subpart 1–1.6.

§ 1–1.603–2 Agency records.

At a minimum, each agency shall maintain records relating to each contractor it has debarred or suspended. Records should contain the following information:

(a) The names and addresses of all debarred or suspended contractors.

(b) The cause for the action (see §§ 1–1.605 and 1–1.606).

(c) Any limitations to or deviations from the normal effect of debarment of suspension.

(d) The effective date of the action and, in the case of debarments, the termination date.

(e) The name and telephone number of the agency's point of contact for the action. Each agency shall provide GSA with a single point of contact for agency actions to be used in the consolidated list.

§ 1–1.604 Treatment to be accorded listed contractors.

§ 1–1.604–1 General.

(a) *Actions after August 30, 1982.* Contractors debarred or suspended by any agency in accordance with this subpart shall be excluded from receiving contracts, and agencies shall not knowingly solicit offers from, award contracts to, renew or otherwise extend the duration of an existing contract with, or consent to subcontracts with these contractors, unless the acquiring agency's head or authorized representative determines, in writing, that there is a compelling reason for such action.

(b) *Actions prior to August 30, 1982.* Contractors debarred or suspended by an agency in accordance with policies and procedures in effect prior to August 30, 1982 shall be excluded from receiving contracts of the agency which effected the action. The acting agency shall not solicit offers from, award contracts to, renew or otherwise extend the duration of an existing contract with, or consent to subcontracts with these contractors unless the agency head or an authorized representative determines, in writing, that there is a compelling reason for such action. Although such debarments and suspensions do not have Government-wide effect, agencies should consider such actions in determining contractor responsibility and may debar or suspend the contractor based on the original action in accordance with §§ 1–1.605–2(d) and 1–1.606–2(c).

(c) *Actions based on statutes or other regulations.* Contractors declared ineligible on the basis of statutory or other regulatory procedures shall be excluded from receiving contracts and, if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, renew or otherwise extend the duration of an existing contract with, or consent to subcontracts with these contractors under those conditions and for that period. Specific information concerning the treatment to be accorded ineligible contractors will be contained in the consolidated list.

§ 1–1.604–2 Review procedures.

Prior to initiating a pre-award survey or any of the procurement actions set forth in § 1–1.604–1 with respect to a particular bidder, offeror, or proposed subcontractor, the consolidated list shall be reviewed. If the bidder, offeror, or proposed subcontractor is listed, it shall receive such treatment as appropriate according to the basis for its listing.

§ 1–1.604–3 Continuation of current contracts.

(a)(1) Notwithstanding the listing of a contractor for the causes set forth in this subpart, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the head of the agency concerned or an authorized representative determines that termination of the contract is in the Government's best interest.

(2) Decisions regarding the termination of contracts, if any, should be made only after review by agency contracting and technical personnel and by legal counsel to assure the propriety of the proposed action.

(b) Agencies shall not renew current contracts or subcontracts of debarred or suspended contractors, or otherwise extend their duration, unless the acquiring agency's head or a designee states in writing the compelling reasons for renewal or extension.

§ 1–1.604–4 Restrictions on subcontracting.

When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to Government consent, approval shall not be given unless the head of the agency or an authorized representative determines in writing that there is a compelling reason for such action.

§ 1–1.605 Debarment.

§ 1–1.605–1 General.

(a) The debarring official may, in the public interest, debar a contractor for any of the causes contained in § 1–1.605–2, using the procedures in § 1–1.605–3. The existence of a cause for debarment under § 1–1.605–2, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment decision.

(b) Debarment of a contractor constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor, if they are (1) specifically named and (2) given written notice of the proposed debarment and an opportunity to respond (see § 1–1.605–3(c)).

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless the head of the agency taking the procurement action, or an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d) When no suspension is in effect under § 1–1.606 at the time debarment is proposed, no contracts shall be awarded to, and no subcontracts shall be consented to or approved for, the contractor by the agency proposing the action, pending a debarment decision by the agency.

§ 1–1.605–2 Causes for debarment.

The debarring official may debar a contractor for any of the causes listed in (a) through (d) following:

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract, or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of bids or proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(1) Willful failure to perform in accordance with the terms of one or more contracts; or

(2) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(d) Debarment for any of the above causes by another agency where the original debarment did not have Government-wide effect.

§ 1–1.605–3 Procedures.

(a) *Investigation and referral.* Agencies shall prescribe procedures for the prompt reporting, investigation, and referral to debarring officials of matters appropriate for the officials' consideration.

(b) *Decisionmaking process.*

(1) Agencies shall prescribe procedures governing the debarment decisionmaking process, which shall be as informal as practicable, consistent with principles of fundamental fairness. These procedures shall afford contractors (and any specifically named affiliates) with an opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to proposed debarments.

(2) In actions not based upon a conviction or judgment or on a debarment by another agency, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, fact-finding shall be conducted. The official conducting the fact-finding shall—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Ensure that a record of the fact-finding is transcribed and made available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* Debarments shall be initiated by informing contractors and any specifically named affiliates by certified mail return receipt requested, as follows:

(1) A debarment is being considered.

(2) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based.

(3) The cause(s) relied upon under § 1–1.605–2 for the proposed debarment.

(4) The contractor, within 30 days after receipt of the notice, may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts.

(5) The agency's procedures governing debarment decision-making.

(6) The potential effect of the proposed debarment (see §§ 1–1.604–1(a) and 1–1.605–1(c)); and

(7) Pending a debarment decision if no suspension is in effect under § 1–1.606, no contracts will be awarded to, and no subcontracts will be consented to or approved for the contractor.

(d) *Debarring official's decision.*

(1) In actions based upon a conviction or civil judgment, or a debarment by another agency, or in which there is no dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in efffect under § 1–1.606, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.

(2) In actions in which fact-finding is necessary as to disputed material facts, written findings of fact shall be prepared. The debarring official shall

base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed debarment is not based upon a conviction, civil judgment or debarment by another agency, the cause for debarment must be established by a preponderance of the evidence.

(e) *Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail return receipt requested, as follows:

(i) The notice of proposed debarment shall be referenced;

(ii) The reasons for debarment shall be specified;

(iii) The period of debarment, including effective dates (see § 1–1.605–4) shall be stated; and

(iv) The notice shall state that debarment is effective throughout the executive branch of the Government, unless the head of the agency or an authorized representative determines that there is a compelling reason to continue business dealings with the contractor (see § 1–1.605–1(c)).

(2) If a debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved of the decision by certified mail, return receipt requested.

§ 1–1.605–4 Period of debarment.

(a) Debarments shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed 3 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined necessary, the procedures in § 1–1.605–3 shall be followed to extend the debarment.

(c) The debarring official may consider terminating the debarment or reducing the period or extent of debarment, upon the contractor's application, supported by documentation, for reasons deemed appropriate by the debarring official, such as:

(1) Newly discovered material evidence.

(2) Reversal of the conviction or judgment upon which the debarment was based.

(3) Bona fide change in ownership or management.

(4) Elimination of other causes for which the debarment was imposed.

§ 1–1.605–5 Imputed conduct.

(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiesence of those contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiscence.

§ 1–1.606 Suspension.

§ 1–1606–1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in § 1–1.606–2, using the procedures in § 1–1.606–3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § 1–1.606–2, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence, as appropriate.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1) specifically named and (2) given written notice of the suspension and an opportunity to respond (see § 1–1.606–3(c)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless the head of the agency taking the procurement action, or an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

§ 1–1.606–2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of bids or proposals;

(3) Commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the cause in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a

Government contractor or subcontractor.

(d) A contractor may be suspended for any of the above causes based on a suspension by another agency where the original suspension does not have Government-wide effect.

§ 1–1.606–3 Procedures.

(a) *Investigation and referral.* Each agency shall prescribe procedures for the prompt reporting, investigation, and referral to the the debarring official of matters appropriate for that official's consideration.

(b) *Decision-making process.*

(1) Each agency shall prescribe procedures governing its suspension decision-making process, which shall be as informal as practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment or a suspension by another agency, if it is found that the contractor's submission in opposition raises a dispute over facts material to the suspension and if no determination has been made, on the basis of advice received from the Department of Justice or a state prosecuting official, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, fact-finding shall be conducted. The official conducting fact-finding shall:

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents; and

(ii) Ensure that a record of the fact-finding is transcribed and made available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When contractors and any specifically named affiliates are suspended, they shall be informed immediately by certified mail return receipt requested, as follows:

(1) A decision to suspend has been made and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities (i) of a serious nature in business dealings with the Government, or (ii) seriously reflecting on the propriety of further Government dealings with the contractor; any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing Government evidence.

(2) The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue.

(3) The cause(s) relied upon under § 1–1.606–2 for imposing suspension.

(4) The effect of the suspension (see §§ 1–1.604–1(a) and 1–1.606–1(d)).

(5) The contractor, within 30 days after receipt of the notice, may submit, in person, in writing or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over material facts.

(6) Fact-finding to determine disputed material facts will be conducted unless (i) the action is based on an indictment or another agency's suspension or (ii) a determination is made, on the basis of the advice of a Department of Justice or a state prosecuting official, that the substantial interests of the Government or the state in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.*

(1) In actions (i) based on an indictment or a suspension by another agency, (ii) in which the contractor's submission does not raise a dispute over material facts; or (iii) in which fact-finding to determine disputed material facts has been denied on the basis of the advice of the Department of Justice or a state prosecuting official, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the Contractor.

(2) In actions in which fact-finding is necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(i) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (see § 1–1.605–4(c)) for the reasons for terminating or reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or the imposition of debarment by any agency.

(4) A prompt written notice of the suspending official's decision shall be sent to the contractor by certified mail, return receipt requested.

1–1.606–4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in § 1–1.606–4.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or a state prosecuting official requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice or the state prosecuting official of the proposed termination of the suspension, at least 30 days before the 12-month period expires to give that agency an opportunity to request an extension.

1–1.606–5 Scope of suspension.

The scope of suspension shall be the same as that for debarment (see § 1–1.605–5), except that the procedures in § 1–1.606–3 shall be used in imposing the suspension.

§ 1–1.607 Agency coordination.

When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Ray Kline,

Acting Administration of General Services.

[FR Doc. 82–27208 Filed 10–1–82; 8:45 am]

BILLING CODE 6820–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-854; RM-3898]

FM Broadcast Station in Sebewaing and Tawas City, Michigan; Changes Made in Table Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 280A to Sebewaing, Michigan, and substitutes Chanel 257A for Channel 280A at Tawas City, Michigan, in response to a petition filed by Gaeth/Hofmeister, Inc. Station WKJC, on Channel 280A at Tawas City, is modified to specify operation on the newly-assigned channel. The assignment at Sebewaing could provide a first local aural service to that community.

DATE: Effective November 29, 1982.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: September 17, 1982.

Released: September 27, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Sebewaing and Tawas City, Michigan), BC Docket No. 81-854 RM-3898.

1. The Commission herein considers the *Notice of Proposed Rule Making and Order to Show Cause*, 46 Fed. Reg. 61677, published December 18, 1981, proposing the assignment of Channel 280A to Sebewaing, Michigan, as its first FM assignment, and the substitution of Channel 257A for Channel 280A at Tawas City, Michigan. Comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned. Comments and a request for hearing were filed by Carroll Enterprises, Inc. ("Carroll"), licensee of FM Station WKJC, Tawas City, Michigan, to whom the *Order to Show Cause* was directed. Petitioner and Carroll filed reply comments.

2. Sebewaing,[1] in Huron County, is located approximately 150 kilometers (95 miles) north of Detroit. It presently is devoid of local service.

3. As stated in the *Notice*, petitioner's engineering study revealed that the proposed assignment of Channel 280A to Sebewaing would provide a first FM (and a second nighttime aural) service to 943 persons in an area comprised of 30 square kilometers (11.8 square miles), and a second FM service to 3,005 persons in an area of 168 square kilometers (64.8 square miles).

4. Since there is no FM channel available which could be assigned to Sebewaing without changing existing assignments at other communities, petitioner urges the substitution of Channel 257A for 280A at Tawas City, Michigan (occupied by Station WKJC), as a technically feasible means of providing Sebewaing with a first assignment with the least disturbance to existing assignments and stations. Its showing demonstrates that Channel 280A would meet technical requirements for assignment and use at Sebewaing, if deleted at Tawas City, provided a site restriction of 5 miles is imposed. Additionally, it established that Channel 257A would be a technically satisfactory replacement for Channel 280A at Tawas City since it could be utilized from the present WKJC transmitter site.

5. In response to the *Notice and Order to Show Cause*, Carroll requested a hearing, or alternatively suggested that it be reimbursed by the petitioner herein, who could then seek reimbursement by the ultimate Sebewaing licensee (should another party receive the permit) or it suggested that all applicants place reimbursement monies in escrow pending a decision. If the Commission is unwilling to grant this relief, it requests that it not be required to switch until a permit is granted at Sebewaing. In its comments petitioner advises of its willingness to reimburse Carroll for reasonable expenses in accordance with Commission policy, if it is granted a license for Channel 280A at Sebewaing.

6. In reply comments, Carroll asked that the proceeding be dismissed because it could not find a submission of comments from Gaeth/Hofmeister after a search of the records. However, the Commission did receive a statement from petitioner in accordance with the Commission's filing requirements which require us to deny Carroll's motion to dismiss.

7. Based on the provision of a first local and a first and second service to outlying areas, we find that the assignment of Channel 280A to Sebewaing is warranted. We also have substituted channels at Tawas City consistent with our normal practice of making the change effective at its license expiration date of October 1, 1982. In view of our action delaying the modification of license of Station WKJC, a hearing will not be necessary. See, *Transcontinent Television Corporation* v. *F.C.C.*, 308 F. 2d 339 (D.C. Cir. 1962).

8. Established Commission policy provides for reimbursement for reasonable costs of a channel change in a station's frequency from the party benefitting from a new channel assignment. We believe that equitable considerations dictate that Carroll should be reimbursed for such costs from the ultimate Sebewaing permittee. Assisted by guidelines which we have furnished in similar cases, such as *Circleville, Ohio*, 8 F.C.C. 2d 159 (1967), the appropriate costs constituting a "reasonable" reimbursement figure are generally left to the good faith judgment of the parties eventually involved, subject to Commission approval in the event of disagreement. See also, *Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976).

9. Additionally, as to Carroll's alternate request to be permitted to operate Station WKJC on its present channel until such time as a construction permit is issued for the Sebewaing channel, we shall grant that request. See, *International Falls, Minnesota*, 49 R.R. 2d 1083 (1981); *Knoxville, Tennessee, et al.*, 78 F.C.C. 2d 1208, 47 R.R. 2d 1063 (1980); and *Mayfield and Wickliffe, Kentucky, et al.*, 48 R.R. 2d 1232 (1981). We cannot expect a prospective applicant to expend money for reimbursement before it is assured the permit for the channel. See also, *Muncie, Indiana*, 38 R.R. 2d 1327 (1976). Carroll must specify Channel 257A in its renewal application for Station WKJC although it may continue to operate on the existing channel until such time as a construction permit is issued to the ultimate Sebewaing licensee or until Channel 280A (or an adjacent channel) is needed for assignment and use elsewhere. Once the construction permit is issued, Carroll will be expected to complete the frequency change for Station WKJC expeditiously.

10. As explained in the *Notice*, the instant proposal requires a site restriction of 8 kilometers (5 miles) northeast of Sebewaing to avoid short-spacing on the co-channel to Station WOAP-FM, Owosso, Michigan. Further, the proposed allocation of Channel 280A

[1] In view of the Commission's recent adoption of the *Second Report and Order* in BC Docket No. 80-130, 90 F.C.C. 2d 88 (1982), *In the Matter of Revision of FM Assignment Policies and Procedures*, the inclusion of population figures, as well as demographic data are not required for this proposal.

to Sebewaing, Michigan, will create a short-spacing of 24 kilometers (15 miles) to a Canadian allocation on the co-channel at Sarnia, Ontario. However, the Canadian Government has given its concurrence in the proposal.

11. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective November 29, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended as follows:

City	Channel No.
Sebewaing, Michigan	280A
Tawas City, Michigan	[2]257A, 269A

[2]Effective 3 A.M. local time, October 1, 1982 (concurrently with the expiration of the outstanding license for Station WKJC on Channel 280A at Tawas City, Michigan), or such earlier date as Station WKJC may, upon its request, cease operation on Channel 280A.

12. It is further ordered, pursuant to the authority contained in section 316(a) of the Communications Act of 1934, as amended, that the outstanding license for Station WKJC, held by Carroll Enterprises, Inc. at Tawas City, Michigan is modified effective October 1, 1982, to specify operation on Channel 257A in lieu of Channel 280A, with the condition it will be reimbursed for the the reasonable costs incurred in switching frequencies from the ultimate permittee of Channel 280A at Sebewaing. The renewal application of Station WKJC for the license period commencing October 1, 1982, shall specify operation on Channel 257A. In addition, it shall comply with the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to section 1.1301 of the Commission's rules.

13. It is further ordered, That the Secretary of the Commission shall send a copy of this Order by certified mail, return receipt request, to Carroll Enterprises, Inc., 523 Meadow Road, Tawas City, Michigan 48763, and also a copy thereof, by regular mail to its attorney, Julian P. Freret, Esq. of Booth and Freret, 1302–18th Street, N.W., Washington, D.C. 20036.

14. It is further ordered, That the request of Carroll Enterprises, Inc. for a hearing pursuant to section 1.87 of the Commission's rules, is dismissed.

15. It is further ordered That this proceeding is terminated.

16. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82–27214 Filed 10–1–82; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[BC Docket No. 82–124; RM–3782; RM–4107]

FM Broadcast Station in Honolulu, Hawaii; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns three Class C channels to Honolulu, Hawaii, in response to a petition filed by KHVH, Inc.

DATE: Effective November 22, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: September 17, 1982.

Released: September 23, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Honolulu, Hawaii), BC Docket No. 82–124, RM–3782, RM–4107.

1. Before the Commission is a *Notice of Proposed Rule Making*, 47 FR 10603, published March 3, 1982, proposing the assignment of Class C Channels 253, 258 and 262 to Honolulu, Hawaii. Comments were filed by KHVH, Inc. ("petitioner") and by O'Day Broadcasting Company (licensee of Station KORL (AM), Honolulu), both stating their interest in a Class C channel at Honolulu.[1] Additionally, O'Day Broadcasting submitted a counterproposal. The petitioner filed reply comments.

2. O'Day's counterproposal favors changing the system of allocating frequencies only for Hawaii to a different system in view of the recent Commission's action making some 50 FM channels available for assignment to Hawaii (General Docket 80–710, 87 F.C.C. 2d 962 (1981)). Their suggested procedure would eliminate the rule making process to first assign a channel and then permit applications specifying the assigned frequency. Rather, O'Day would favor having the Commission accept applications for one of the newly available channels immediately and without an allocation. O'Day alleges that its proposal could quickly and efficiently meet those demands for allocations, whereas, under the existing system, a costly, time-consuming and resource wasting comparative hearing would be required to determine the ultimate permittee for an assigned channel. It feels that the two step allocation process in Hawaii is unnecessary with 50 additional channels available for assignment. As an alternative to the present system, O'Day urges the Commission to issue a Notice of Proposed Rule Making to amend § 1.401(d) with regard to Hawaii. However, should the Commission find it necessary to retain the present allocation procedure for Hawaii, it should issue a Notice of Rule Making and cutoff, advising that it proposes to assign FM channels to the extent that it deems necessary—equal to the number of commenting parties indicating their intent to apply for a channel.

3. Petitioner supports the counterproposal (without prejudice to its petition), either as an alternative to its proposal or as a means of assigning channels throughout the State of Hawaii, if and when the demand arises. Petitioner notes that the *Notice* invited further proposals for additional assignments to Honolulu, and in effect, the Commission would seemingly anticipate suggestions similar to the demand approach, stated in O'Day's counterproposal.

4. The *Notice* indicated that additional assignments could be made to Honolulu, based on demand. The intent of the *Notice* was merely to direct any party

[1]In response to the *Notice* comments were also filed by (1) Richard A. Bowers and Thomas F. Muller, requesting the assignment of Channel 256 to Waimea, Hawaii (BC Docket 82–483) (47 FR 35498, published August 10, 1982); (2) by KDEO Associates (licensee of Station KDEO (AM), Waipahu, Hawaii), requesting that one of the proposed allocations for Honolulu be assigned to Waipahu (RM–4111); and (3) by Mauna Kea Broadcasting Company, requesting the reassignment of Channel 242 from Kailua to Honolulu, Hawaii (see BC Docket 82–542, 47 FR 36247, published August 19, 1982). These requests are being considered in separate rule makings since they involve other communities.

interested in utilizing one (or more) of the newly allocated channels in Hawaii, to express that desire in comments (as a counterproposal). It was not the Commission's intent to suggest a different system of applying for new allocations. That determination is a matter outside the scope of the proceeding. It should have been raised in General Docket 80–710, *supra.*

5. Three parties have expressed an interest in operating a Class C facility in Honolulu (KHVH, Inc., O'Day Broadcasting Company and Windward Broadcasting Company).[2] Based on this interest, the Commission is persuaded that the public interest would be served by granting the three Class C assignments, as proposed in the *Notice.*

6. In view of the foregoing and pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective November 22, 1982, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Honolulu, Hawaii	226, 230, 234, 238, 248, 253, 258, and 262.

7. It is further ordered, That the counterproposal filed by O'Day Broadcasting Company, is denied.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Montrose H. Tyree, Broadcast Bureau (202) 632–7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 82–27213 Filed 10–1–82; 8:45am]

BILLING CODE 6712–01–M

[2] Windward Broadcasting Company participated at an earlier stage and did not file comments in response to our *Notice.*

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–176]

Rail Reorganization Trustees; Organization and Delegation of Powers and Duties

AGENCY: Transportation (DOT).

ACTION: Final rule.

SUMMARY: Department of Transportation (DOT) delegates to the General Counsel of the Department the authority to recommend nominees for the position of trustee of a railroad in reorganization.

DATE: This amendment becomes effective October 4, 1982.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, (202) 426–4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The 1978 codification of the Bankruptcy Act (Pub. L. 95–598; November 6, 1978; 92 Stat. 2549) changed the procedure for selecting the trustee in a railroad reorganization. When a railroad files a petition for reorganization under Chapter 11, the Secretary of Transportation is required to submit to the court considering the petition a list of five candidates from which the court (or the United States Trustee) selects the trustee. (See 11 U.S.C. 1163, 151163) (Under prior law, the court appointed the trustee subject to confirmation by the Interstate Commerce Commission.) Since this authority relates basically to legal proceedings, it is being delegated to the General Counsel of the Department.

List of Subjects in 49 CFR Part 1

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

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended in § 1.57, by adding a new paragraph (q) at the end thereof to read as follows:

§ 1.57 Delegations to General Counsel.

The General Counsel is delegated authority to—

* * * * *

(q) Submit to the court considering a railroad's petition for reorganization under Chapter 11 of the Bankruptcy Act a list of five candidates to serve as trustee, under 11 U.S.C. 1163; and to submit such list of candidates to the appropriate United States Trustee, under 11 U.S.C. 151163.

(Sec. 9(e), Department of Transportation Act, 49 U.S.C. 1657(e))

Issued in Washington, D.C., on September 20, 1982.

Andrew L. Lewis, Jr.,

Secretary of Transportation.

[FR Doc. 82–27265 Filed 10–1–82; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing the Madison Cave Isopod as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Madison Cave Isopod (*Antrolana lira*) to be a Threatened species. This action is being taken because this species, which is restricted to a single cave and adjacent fissure in Augusta County, Virginia, is threatened by vandalism and mercury pollution. The rule provides protection to wild populations of this species.

DATE: This rule becomes effective on November 3, 1982.

ADDRESSES: Questions concerning this action may be addressed to: Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: For further information on this final rule, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1980, the Service published a proposed rule in the **Federal Register** (45 FR 66410–66411) advising that sufficient evidence was on file to support a determination that the Madison Cave isopod was a Threatened species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That proposal summarized the factors thought to be contributing to the likelihood that the Madison Cave isopod could become Endangered within the foreseeable future. The earliest known collection of the Madison Cave isopod was made on August 23, 1958, by Dr. Thomas Barr of the University of Kentucky. The species was described and named in 1964 (*International Journal of Speleology,* Vol. 1, pp. 229–236 and plates) by Dr. Thomas E. Bowman of the Smithsonian

Institution. This species has been found only in three small pools of water in Augusta County, Virginia (Holsinger, 1979). Two of these pools are in Madison Cave and the other is in a small nearby fissure. This unique species is the only member of the genus *Antrolana*. Madison Cave has considerable historical significance. The continued existence of this species is threatened by human visitation to the cave and mercury pollution in the South River (Bolgiano, 1980). The proposed rule also specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Included in this proposal was a summary of the status of this species.

A recent study of the Madison Cave isopod (Collins, 1982) has added much to our knowledge of the natural history of this species and confirmed the threats outlined in the Service's proposal of Threatened status for the species.

The Madison Cave isopod was proposed as a Threatened species on January 12, 1977, in a publication in the **Federal Register** (42 FR 2507–2515). That proposal was withdrawn on December 10, 1979 (44 FR 70796–70797) as a result of changes in listing procedures directed by the 1978 amendments to the Endangered Species Act. Subsequent to the withdrawal, the Service received oral communications from the owner of Madison Cave on the condition of the cave and from Dr. John Holsinger of Old Dominion University on the results of his then recent field studies. Also subsequent to the withdrawal, the Service received a report on mercury contamination of the South River (Bolgiano, 1980) which has underground connections with the pools that are the habitat of the Madison Cave isopod. This report and these communications provided significant new information on which the Services reproposal of Threatened status for the Madison Cave isopod on October 6, 1980 (45 FR 66410–66411) was based.

A letter was sent to Governor Dalton of the Commonwealth of Virginia on October 8, 1980, notifying him of the proposed rulemaking for the Madison Cave isopod. On October 6–10, 1980, letters were sent to appropriate Federal agencies, local governments and other interested parties notifying them of the proposal and soliciting their comments and suggestions. Official comments were received from the Office of the Secretary of Commerce and Resources of the Commonwealth of Virginia and the Office of the Chief of Engineers of the Department of the Army.

Summary of Comments and Recommendations

In the October 6, 1980, **Federal Register** proposed rule (45 FR 66410–66411) all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rule.

All public comments received during the period October 6, 1980, through January 5, 1981, were to be considered.

A comment from the Office of the Secretary of Commerce and Resources of the Commonwealth of Virginia, on behalf of Governor Dalton, acknowledged the receipt of the proposal and stated that it had been forwarded to the approprate State officials. No further comments were received from the State.

Office of the Chief of Engineers of the Department of the Army commented that they have no current projects in the vicinity of the Madison Cave isopod's habitat. They further state that the effect of a potential project, the Verona Dam and Lake, would be investigated should study of that potential project be reactivated. The Service responds that detrimental effects of this project, should it be reactivated, on the Madison Cave isopod or its habitat would be unlikely. The project site is on a tributary of the South Fork Shenandoah River that has little or no influence on the locality of the Madison Cave isopod.

Comments in support of listing the Madison Cave isopod as Threatened were received from Dr. John R. Holsinger of Old Dominion University and Dr. Thomas E. Bowman of the National Museum of Natural History. Dr. Holsinger agreed with the Service's decision not to designate Critical Habitat for this species. Dr. Bowman described the great scientific value of this species and emphasized the need to protect its habitat.

After a thorough review and consideration of all the available information, the Director has determined that the Madison Cave isopod (*Antrolana lira*) is Threatened throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

The summary of factors affecting the species, as required by Section 4(a) of the Act and published in the **Federal Register** of October 6, 1980 (45 FR 66410–1), are reprinted below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Unauthorized visitation to Madison Cave has resulted in trash accumulation and siltation in the pools of water that are the habitat of the Madison Cave isopod. In addition, persons standing on the steep talus banks of the pools cause the clay talus to creep into the pools (Holsinger, 1979). These factors are reducing the size and quality of the very limited habitat of this species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation.* Not applicable to this species.

4. *The inadequacy of existing regulatory mechanisms.* There are no known local, State, or Federal laws that protect this species.

5. *Other natural or man-made factors affecting its continued existence.* This species is exposed to mercury contamination from the nearby South River (Bolgiano, 1980). Since the water level changes in the pools occupied by the Madison Cave isopod are correlated with those in the South River (Holsinger, 1979), there is apparently a subterranean connection between the pools and river. The original source of the mercury pollution was an E. I. du Pont de Nemours and Company factory at Waynesboro, Virginia, which is no longer active.

Critical Habitat

Designation of Critical Habitat for the Madison Cave isopod would not be prudent. A major threat to this species is visitation of Madison Cave. Designation of Critical Habitat would require publication of a map and a precise description of the locality. Advertising the location of the cave to the general public would likely increase the incidence of unauthorized visitation.

Effect of This Proposal

Regulations published in Title 50 CFR 17.31 set forth a series of general prohibitions and exceptions which apply to all Threatened animal species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Threatened species under certain circumstances. Regulations governing permits for animals, fish, and wildlife are found at 50 CFR 17.32.

All of these prohibitions and exceptions apply to the Madison Cave isopod through 50 CFR 17.31, except for a special rule promulgated at 50 CFR 17.46 which would allow taking of the species for scientific purposes without Federal permits.

This rule requires Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of the Madison Cave isopod. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Based on a review of information received from local landowners, the Cave Commission and State Water Control Board of the Commonwealth of Virginia, the U.S. Army Corp of Engineers, and the Farmer's Home Administration, no adverse economic effects are expected to result from this action.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

No adverse effects on small entities within the area affected by the rule have been identified and none are expected. No direct costs, enforcement costs, or information collection and recordkeeping requirements are imposed on small entities by the designation.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file at 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Primary Author

The primary author of this rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

References

Bolgiano, R. W. 1980. Mercury contamination of the South, South Fork Shenandoah, and Shenandoah Rivers. Virginia State Water Control Board Basic Data Bulletin 46.

Bowman, T. E. 1964. *Antrolana lira*, a new genus and species of troglobitic cirolanid isopod from Madison Cave, Virginia. International Journal of Speleology 1:229–236.

Collins, T. L. 1982. An ecological study of the troglobitic cirolanid isopod, *Antrolana lira* Bowman, from Madisons Saltpetre Cave and Stegers Fissure, Augusta Co., Virginia.

Faust, B. 1964. Saltpetre caves and Virginia history. Econo Print, Falls Church, Virginia.

Holsinger, J. R. 1979. Freshwater and terrestrial isopod crustaceans (Order Isopoda). Proceedings of the Endangered and Threatened Plants and Animals of Virginia Conference, 1978.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

§ 17.11 [Amended]

1. Section 17.11(h) is amended by adding the following, in alphabetical order under "CRUSTACEANS," to the list of animals.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Crustaceans:							
Isopod, Madison Cave	*Antrolana lira*	U.S.A. (VA)	N/A	T	122	N/A	17.46

2. § 17.46 is amended by adding a new paragraph (a) as follows:

§ 17.46 Special rules—crustaceans.

(a) Madison Cave isopod (*Antrolana lira*).

(1) All provisions of § 17.31 (a) and (b) apply to this species except that it may be taken for scientific purposes without Federal permits issued pursuant to these regulations: *Provided,* that all other Federal, State, or local laws, regulations, ordinances or other restrictions or limitations have been complied with.

* * * * *

Dated: September 16, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-27223 Filed 10-1-82; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 23

Export of American Ginseng Taken in 1982–84 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty regulating the international trade of certain wildlife and plant species. Exports of wildlife or plants listed in Appendix II of CITES may occur if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the speicies, and if a Management Authority is satisfied that the wildife or plants were not obtained in violation of laws for their protection. American ginseng (*Panax quinquefolius*) is listed on CITES Appendix II.

This notice announces final findings by the Scientific and Management Authorities for the United States concerning the export of American ginseng (*Panax quinquefolius*). These are final determinations on the export of specimens taken in the 1982–84 harvest seasons. Such findings are made on a State-by-State basis.

DATE: These findings are effective on October 4, 1982.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Material received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 536, 1717 H Street, N.W., Washington, D.C., or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:
Scientific Authority Findings—Mr. Joseph J. Dowhan, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.
Management Authority Findings—Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.
Export Permits—Ms. Susan Lawrence, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C., 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION: This is the last of three notices concerning the Service's findings on export of American ginseng taken in the 1982–84 seasons. The first notice (47 FR 14664–14666; April 5, 1982) announced the Service's intention to develop findings on export of specimens of ginseng and other species and invited comment on the guidelines that it proposed to use in making such findings. The second notice (47 FR 38369–38373; August 31, 1982) announced the proposed export findings for each species ln a State-by-State basis. The present notice establishes final export findings for American ginseng based on current information about its population status, management, harvest, and State controls.

Information Considered

For American ginseng, the Service sought the following information in its August 31, 1982, proposal, regarding each affected State:

1. Historic, present, and potential distribution of ginseng on a county basis, using county outline maps, and indicating the source(s) and accuracy of this information. Include also the distribution of preferred habitat on a regional or Statewide basis, indicating recent trends in loss or protection of habitat.

2. Approximate number or density of ginseng populations per county or region, and the approximate number of all known ginseng localties in the State, including also the source of this information.

3. Average population size (i.e., "stand" or "patch") or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability and accuracy of the information. Include also any changes from previous years or differences from historical population sizes.

4. An assessment of population trends on a county or regional basis indicating whether populations of ginseng are believed to be increasing, decreasing, stable, extirpated or unknown. Include source(s) and general reliability and accuracy of this information.

5. Assessment of harvest intensity on a county or regional basis indicating whether the relative intensity is heavy, moderate, light, none, or unknown, and any changes from previous years. Provide also the known or estimated number of ginseng collectors in the State.

6. A county map showing those counties in which ginseng is reported to be commercially cultivated. Include figures on the amount of cultivated ginseng reported to be harvested annually and certified for export from the State.

7. Average number of roots per pound harvested, preferably on a county or regional basis or, if these are not available, on a Statewide basis. Include also an assessment of any trend in root sizes or number of roots per pound over previous years.

8. Describe the State's current research program on ginseng and its progress, including a summary of results so far obtained.

9. Describe harvest practices, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements.

10. Information concerning, or a copy of, State law or regulation on: (a) State registration of dealers (cost of registration, season of operation for dealers), (b) dealer maintenance of records, (c) dealer reporting system of ginseng commerce, (d) State certification of legal ginseng take, (e) samples of 1982 dealer certificates, and (f) samples of diggers license, giving cost of license and dates of harvest season.

11. Describe State official certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State.

12. Name, address, and telephone number of the State staff person to contact concerning those information needs.

Scientific Authority Advice

American ginseng *(Panax quinquefolius)* is listed on CITES Appendix II. CITES regulates international trade in species included in Appendix II through a system of permits issued by designated Management Authorities in each party nation. Export permits are to be issued only if a Management Authority receives advice from a Scientific Authority that the export will not be detrimental to the survival of the species.

The Endangered Species Act of 1973, as amended in 1979, designates the Secretary of the Interior as both Management Authority and Scientific Authority of the United States for purposes of CITES. These functions are carried out by the Fish and Wildlife Service. Management Authority responsibilities are delegated to the Associate Director-Federal Assistance. Scientific Authority responsibilities are delegated to the Associate Director-Research.

Criteria for Scientific Authority advice were elaborated in the May 26, 1981, **Federal Register.** Advice on the export of American ginseng and other Appendix II species addressed in these findings is given in a general way, applicable to any specimens harvested in particular States in a given season, rather than on a permit-by-permit basis. The reasons for this practice are that (1) the individual exporters who apply for permits are unable to supply much information about the sources of specimens or the effect of their harvest on the populations of the species, (2) the species in question are subject to commercial exploitation, and it would be burdensome to both the industry and the Service to make separate Scientific Authority decisions on each of the many permits, and (3) the development of general advice on a State-by-State basis enables the Service to conduct a comprehensive review of the status of the species in question and the effect of international trade on its survival.

Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

General criteria used by the Service in determining if export will not be detrimental to the survival of a species are as follows:

1. Whether similar export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem.

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequency of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

3. Whether such export is expected to increase, decrease, or remain constant in frequency.

The Service is applying these criteria in advising on whether export of ginseng will not be deterimental to the survival of the species by evaluating (1) information from each State on past, present, and potential geographic distribution, relative frequency, local abundance, population trends, and harvest intensities on a county-by-county basis, and (2) State research and management programs for this species, including a limited harvest season.

As described in the April 5, 1982, notice (47 FR 14664–14666), the Service is using information complied beginning in 1977 to justify multi-year findings under CITES. Even though multi-year findings are made, the Service will continue to monitor the status of ginseng each year, and will retain the option of revising the findings at any time if new information shows compelling reason for a change.

The OSA has determined that the export of ginseng harvested in the following States during the 1982–84 seasons will not be detrimental to the survival of the species: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin.

Management Authority Findings

Exports of Appendix II species are to be allowed under CITES only if a Scientific Authority has advised that they will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the animals or plants were not obtained in contravention of laws for their protection.

Management Authority criteria for approval of American ginseng exports, on a State-by-State basis, are that the State has adopted the following regulatory measures: (1) State registration of dealers purchasing ginseng in the State, (2) Requirements that such dealers maintain records of their commerce in ginseng and report their ginseng commerce to the State at specified intervals, and (3) Certification by State officials of ginseng shipped from the State, to authenticate that the ginseng was lawfully taken from wild or cultivated sources within the State.

In 1980, the Service announced that the Management Authority would approve export of artificially propagated ginseng only from the States approved for export of wild-collected ginseng because they had the programs necessary to document the source of the plants (45 FR 80444; December 4, 1980). The Service is continuing this practice, but it will also approve the export of artificially propagated ginseng from other States if they can provide similar documentation to minimize the risk that wild-collected plants are exported as cultivated.

Furthermore, in the notice of August 31, 1982 (47 FR 38369–38373), the Service explained that it was strengthening the "Certification of Legal Take" requirement for ginseng moved from the State of origin. This is being done because experience has shown the value of a State official personally inspecting and certifying ginseng leaving the State of origin. It is by such an inspection of ginseng roots and records of ginseng commerce that the State official can document that the roots in question were legally taken from the wild or were artificially propagated in that State.

Recognizing that certain States might not be able to implemeant such a certification program this season, the Service will accept, for the 1982 harvest season only, other forms of State certification that were approved for the 1981 harvest season.

Beginning with the 1983 harvest season, all States seeking export approval for their wild or cultivated American ginseng will be required to have a legally mandated ginseng program that includes, among items discussed in "Information Considered", provisions for a State official to examine and certify all ginseng moved from the State of origin. This certification must include verification of the State of origin, legal taking, year of take, weight of shipment, whether wild or artificially propagated, date of certification, shipment number, dealer's State registration number, and signatures of both the dealer and State official certifying the ginseng.

It was decided to grant multi-year export approval (1982–84) only to those States having a current ginseng program that included a State inspection and certification system and otherwise now satisfied the criteria of both the Scientific and Management Authorities. Those States are Georgia, Kentucky, Minnesota, North Carolina, Vermont (artificially propagated only), and Virginia. States satisfying all criteria of both the Scientific and Management Authorities, except for the State inspection and certification system, will be granted export approval only for the 1982 season. States approved only for 1982 export may not be granted further export approval until a legally mandated ginseng program is developed. Those States are Arkansas, Illinois, Indiana, Iowa, Maryland, Ohio, Missouri, Tennessee, West Virginia, and Wisconsin.

Export Approval

The Service approves export of ginseng lawfully taken during the 1982–84 seasons in the following States, on the grounds that both Scientific Authority and Management Authority criteria have been met:

Georgia, Kentucky, Minnesota, North Carolina, Vermont (artificially propagated only) and Virginia.

The Service approves export of ginseng lawfully taken during the 1982 (only) season in the following States:

Arkansas, Illinois, Indiana, Iowa, Maryland, Ohio, Missouri, Tennessee, West Virginia, and Wisconsin.

The Service does not grant general approval for exports of American ginseng taken from any other State during the 1982–84 harvest seasons. For all other States not named above, either the taking of American ginseng is not allowed by the State during 1982–84 seasons, the species does not occur in the State, or the State did not provide the Service with information on which to base Scientific Authority and Management Authority findings. The Service does not grant general approval for international export of American ginseng from such States.

Information from States and records of the Service's evaluation of this information are available for public inspection at the Office of the Scientific Authority (for Scientific Authority advice) or at the Federal Wildlife Permit Office (for Management Authority findings).

The Service holds the view that every attempt should be made to provide the public with the greatest possible opportunity to comment on regulations. On April 5, 1982, the Service published a preliminary notice (47 FR 14664–14666) of its intent to propose findings on American ginseng and other Appendix II species taken during the upcoming harvest season, providing the largest period possible for public comment. On August 31, 1982, the Service published proposed findings (47 FR 38369–38373) for these species, limiting the comment period on ginseng to 20 days in the opinion that a longer period would be impractical and contrary to the public interest. It was also recognized that time would be of the essence to publish final findings at the close of that comment period.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of these regulations after this final rulemaking is published could

affect the harvest season already begun in several States and adversely impact State conservation programs for this species by, for example, reducing compliance with State certification and documentation requirements. The Service, therefore, finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Based on a review and evaluation of information contained in the attached Environmental Impact Assessment, I have determined that the final findings on the export of American ginseng taken in the 1982–84 seasons are not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this proposal is not required.

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* 87 Stat. 884 as amended), and was prepared by Joseph J. Dowhan, Office of the Scientific Authority, telephone (202) 653–5948, and S Ronald Singer, Federal Wildlife Permit Office, telephone (703) 235–2418.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). For ginseng, exporters normally derive their product from the ginseng harvest in a number of States. Therefore, the approval or disapproval of export from any one State would not significantly affect the industry.

List of subjects in 50 CFR 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Accordingly, Part 23 of Title 50, Code of Federal Regulations, is amended as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain of Certain Species

1. In § 23.51, add new paragraph (e) as follows:

§ 23.51 American ginseng (*Panax quinquefolius*)

* * * * *

(e) *1982 through 1984 harvests:* Georgia, Kentucky, Minnesota, North Carolina, Vermont (artificially propagated ginseng only), and Virginia.

1982 harvest only: Arkansas, Illinois, Indiana, Iowa, Maryland, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin.

Conditions on findings: Roots must be documented as to State of origin and season of collecting. Wild and artificially propagated roots must be certified by the State as legally collected and such certification must be presented upon export.

Dated: September 22, 1982.

G. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-27207 Filed 10-1-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 2510-94]

Inspection and Certification; Fees and Charges

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Final Rule.

SUMMARY: This rulemaking revises the fiscal year 1982 rates for voluntary Department of Commerce fishery product grading and certification services. This increase in rates is due to increased program costs.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Chief, Inspection Services Branch, Seafood Research, Inspection and Consumer Services Division, National Marine Fisheries Service, Washington, D.C. 20235, Phone: (202) 634–7458.

SUPPLEMENTARY INFORMATION: On October 1, 1981, the President, by Executive Order *12330* (46 FR 50921), increased the rates of basic pay of General Schedule employees by 4.8 percent. Title 50 CFR 206.81(a) requires that the hourly rates for inspection fees automatically be increased on the effective date of the pay adjustment by an amount equal to the increase received by the average General Schedule grade level of fishery product inspectors receiving such pay increases. In addition, during the previous year this Agency has incurred added costs for increased inspector training, equipment replacement, and other administrative expenses.

This rulemaking amends the existing regulations to reflect the added costs of the fiscal year 1982 General Schedule pay increase and the additional administrative costs associated with providing fishery product grading and certification services.

Executive Order 12291

An initial determination has been made that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is anticipated that these increases will not have a significant economic effect on producers, packers and consumers.

Regulatory Flexibility Act

Since this rulemaking applies exclusively to agency contracts for fishery product inspection services, it is exempt from the notice and comment provisions and therefore, is not subject to the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

Background

Pursuant to the authority vested in the Secretary of Commerce by Reorganization Plan No. 4 of 1970 (84 Stat. 2090), § 260.70 of Part 260, Inspection and Certification, is hereby amended by adjusting the rates for fees and charges to provide for the recovery of increased costs to the voluntary Fish and Fishery Products Inspection Program.

List of Subjects in 50 CFR Part 260

Food grades and standards, Food labeling, Seafood.

In § 260.70, paragraphs (b)(1), (2), (3), and (d) introductory text and table, and paragraph (d)(2) are revised as follows:

§ 260.70 Schedule of fees.

* * * * *

(b)(1) Type I—Official establishment and product inspection—contract basis:

	Per hour
Regular time	$22.45
Overtime	30.95
Sunday and legal holidays (2 hr. minimum)	38.45

The contracting party shall be charged at an hourly rate of $22.45 per hour for regular time; $30.95 per hour for overtime in excess of 8 hours per shift per day; and $38.45 per hour for Sunday and national legal holidays for service performed by inspectors at official establishment(s) operating under Federal inspection. The contracting party shall be billed monthly for services rendered in accordance with contractual provisions at the rates prescribed in this Section. Products designated in a contract will be inspected during processing at the hourly rate for regular time, plus overtime, when appropriate. Products not designated in the contract will be inspected upon request on a lot inspection basis at lot inspection rates as prescribed in this Section.

(2) Type II—Lot inspection—Official and unofficially drawn samples:

	Per hour
Regular time	$32.60
Overtime	45.60
Sunday and legal holidays (2 hr. minimum)	58.75
Minimum fee	26.70

For lot inspection services performed between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, $32.60 per hour. For lot inspection services performed at times Monday through Friday other than 7:00 a.m. to 5:00 p.m. and on Saturdays (2 hr. minimum)—$45.60 per hour. Sunday and national legal holidays (2 hr. minimum)—$58.75 per hour. The minimum service fee to be charged and collected for inspection of any lot or lots of products requiring less than 1 hour shall be $26.70.

(3) Type III—Miscellaneous inspection and consultative services.

When any inspection or related service performed such as but not limited to initial and final establishment surveys, appeal inspections, sanitation evaluation, SIFE inspections, sampling product evaluation, and label and product specification review, requires charges to which the foregoing sections are clearly inapplicable, charges will be based on the rates set forth below:

	Per hour
Regular time	$28.10
Overtime	37.35
Sunday and legal holidays (2 hr. minimum)	48.05
Minimum fee	21.20

(i) For miscellaneous inspection and consultative services performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday—$28.10 per hour; for miscellaneous inspection and consultative services performed at times Monday through Friday other than 7:00 a.m to 5:00 p.m. and on Saturdays (2 hr. minimum)—$37.35 per hour.

(ii) For miscellaneous inspection and consultative services performed on Sunday and national legal holidays (2 hr. minimum)—$48.05 per hour. The minimum service fee to be charged and collected for miscellaneous inspection and consultative services requiring less than 1 hour shall be $21.20.

(d) Analytical services: Fees for various laboratory analyses are set forth below.

Type of analyses	Fee per individual analysis
Hydrogen ion concentration	$7.03
Moisture (drying method)	14.05
Fat	14.05
Protein	14.05
Salt	28.10
Mercury	14.05
Ammonia	28.10
Histamine	28.10
Extraneous materials	28.10
Bacteriological plate count	7.03
Bacteriological direct count	7.03
Yeast and mold count	7.03
Staphylococcus	14.05
Salmonella[1]:	
Step 1	14.05
Step 2	14.05
Step 3	14.05
Coliforms, fecal coliforms, *E. coli*:	
Step 1—Coliforms	7.03
Step 2—Fecal coliforms (*E. coli* presumptive)	7.03
Step 3—*E. coli* (confirmed)	7.03
Step 4—*E. coli* (complete)	7.03
Marine vibrios	14.05
Fishery products species determination	56.20

[1] Salmonella test may be in three steps as follows:
Step 1—growth through differential agars;
Step 2—growth and testing through triple-sugar-iron agars;
Step 3—confirmatory test through biochemicals.

* * * * *

(2) Fees to be charged for any analysis performed at a Government laboratory not specifically shown in this paragraph (d) will be based on the time required to perform such analyses as shown under Type III—Miscellaneous Inspection.

* * * * *

(Sec. 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624)

Dated: September 9, 1982

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-27266 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 2729-142]

Atlantic Groundfish (Cod, Haddock, and Yellowtail Flounder)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan). This rule is essentially similar to the proposed rule and to an emergency interim rule which implemented the Interim Plan shortly after publication of the proposed rule. The Interim Plan is intended to reduce regulatory burdens on the fishery and facilitate development of a more reliable data base for making management decisions.

EFFECTIVE DATE: September 29, 1982.

ADDRESSES: Copies of the Interim Plan, the final Environmental Impact Statement, Regulatory Impact Review, and Regulatory Flexibility Analysis are available from Douglas Marshall, Exeuctive Director, New England Fishery Managment Council, Suntaug Office Park, 5 Broadway, Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr., Atlantic Groundfish Management Plan Coordinator, 617-281-3600.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council), in consultation with the Mid-Atlantic Fishery Management Council, prepared the Interim Fishery Management Plan for Atlantic Groundfish (Interim Plan) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The Assistant Administrator for Fisheries, NOAA, approved the Interim Plan on January 11, 1982, and published proposed regulations on March 11, 1982 (47 FR 10605). The notice of proposed rulemaking invited public comment on the Interim Plan and proposed regulations for 45 days. An emergency interim rule implemented the Interim Plan on March 31, 1982, (47 FR 13357) for 45 days. That rule was extended for an additional 45 days on May 15, 1982 (47 FR 20781).

The preamble of the proposed rule discussed the management measures of the Interim Plan in detail; the reader is referred to 47 FR 10605. This final rule is essentially similar to the proposed and

emergency interim rules. Minor revisions are made in response to public comments, to clarify terms, and to correct typographical errors. Changes are also made to correct the number of a NOAA form used for reporting under the optional settlement program (OSP), and to clarify the application of the percentage requirements under the OSP. The requirement for a minimum mesh size throughout the body of nets is eliminated in accordance with the Council decision to specify only a minimum mesh size for cod ends. The major substantive change is the elimination of the mandatory recordkeeping requirements for dealers and processors under § 651.5(a), consistent with the voluntary Three-Tier Fishery Information Collection System (Three-Tier System). The comments received and the agency's responses to them are discussed below.

Response to comments

Written comments were submitted by the U.S. Coast Guard, U.S. Representative Barney Frank (Massachusetts), the Government of Canada, the New Bedford Seafood Council, the New England Fishery Management Council, and the State of Maine Department of Marine Resources. Additionally, verbal comments were received from members of the fishing industry and interested citizens. All comments have been considered by the agency in producing this final rule.

Comments and responses

Comment—The New Bedford Seafood Council objected to approval of the Interim Plan, contending that it violates National Standards 1 (plans shall prevent overfishing), 2 (plans shall be based on best scientific information available), and 5 (plans shall promote efficiency in utilization of the resource).

Response—The New England Fishery Management Council has addressed the concern regarding overfishing by limiting the term of the Interim Plan to three years and by making a commitment to consider the issue of providing a "fail-safe" system or "braking" mechanism during the first two years of the Interim Plan which could be incorporated in the management measures during the third year. The National Marine Fisheries Service (NMFS) Northeast Fisheries Center scientists have indicated that they do not believe overfishing, to the extent experienced in the late 1960s and early 1970s as a result of foreign fishing, will occur within this three-year time span. Should the Council fail to develop adequate safeguards within the specified time, the Secretary has the authority to take direct action to prevent overfishing.

The Council worked directly with the Northeast Fisheries Center to obtain the best scientific information available for the development of the Interim Plan. The Council considered a wide range of alternative measures when designing the Interim Plan. The management measures chosen by the Council from among the considered alternatives were not the most stringent conservation measures, but were deemed to provide an acceptable degree of protection, based upon the best available scientific data as to the current condition of the stocks.

The concern that the Interim Plan will not promote efficiency in utilization of the resource is a reasonable one. However, the Council intentionally chose to formulate a management strategy which did not contain explicit economic objectives. The Interim Plan endorses the philosophy that, over the short term, optimal distribution of economic benefits within the fishery, and concomitant efficient utilization of the resources, is best achieved through the operation of a free-market economy. It remains to be demonstrated that this approach will not produce satisfactory economic results. From a consumer standpoint, this approach may produce highly desirable effects by providing a good supply of fish at an attractive price.

Comment—The New Bedford Seafood Council stated that specification of a minimum mesh size, as a primary management tool, is inadequate to control fishing effort, and that allowing multiple meshes on board a vessel makes the mesh size regulation impossible to enforce.

Response—Managing a fishery by relying on a minimum mesh size requirement alone has recognized weaknesses. For this reason, it is combined with minimum fish size requirements. These minimum mesh size and fish size requirements complement each other, and provide significant biological protection to the fish stocks. Although the minimum mesh size regulation alone would be difficult to enforce adequately, the minimum fish size requirement removes most incentive to violate the mesh size regulation. There is no benefit to the fisherman who uses a small-mesh net when all of the undersized fish caught will have to be discarded.

Comment—The New Bedford Seafood Council stated that the Interim Plan creates a safety hazard for fishermen since it will result in the need to increase landings to maintain income. This commenter suggests fishermen will risk longer trips, overload their vessels, and take chances by operating in hazardous weather conditions.

Response—This comment is speculative and assumes that fishing vessel captains will have to take excessive risks to earn a living. The NMFS recognizes that there are certain risks associated with fishing for groundfish; however, the regulations implementing the Interim Plan provide no greater reason for risk-taking than did the regulations implementing the original groundfish fishery management plan, nor do any of the Interim Plan's provisions encourage vessel operators to assume greater risks in the operation of their vessels. It is the position of NMFS that the primary responsibility for the safe operation of a vessel rests with the vessel master.

Comment—The Canadian Government contended that the minimum fish size limits will have an impact on international trade, and it would therefore be appropriate for the regulations to include a waiver of this requirement for imports. The Canadian Government stated that it did not consider the imposition of size limits to be a practical problem, but rather one of principle in the context of U.S. obligations under the United Nations Governing Agreement on Tariffs and Trade (GATT).

Response—The size limit requirement is an essential conservation measure of the Interim Plan. It is, therefore, vital to the integrity of the management system that no exceptions be made to the prohibition on the possession of undersized fish. Any exception could seriously weaken the enforcement of the conservation and management measures of the Interim Plan.

The Council gave serious consideration to the potential impact on international trade of the enforcement of the minimum fish size requirements by possession prohibition. The Council determined that the application of minimum fish size requirements to imported fish would pose no practical problem, primarily because of the product form of most fish when they are marketed in international trade. Since implementation of the minimum size requirement by emergency regulations, the Government of Canada has been unable to identify any practical problems for their products. The NMFS believes this provision to be consistent with U.S. obligations under GATT and further acknowledges the statement of the Government of Canada that application of this measure imposes no practical constraint on international

trade. For these reasons, the regulations have not been changed.

Comment—The wording of the definition of *recreational fishing vessel* could allow commercial vessels to claim recreational status and thereby take cod and haddock below commercial size.

Response—The definition has been changed to correct this. However, because cod and haddock below 17 inches in length could not be sold, there would be little incentive to catch them.

Comment—One commenter recommended a clarification of § 651.23(a), Minimum fish size specification, as it pertains to the sale of undersize cod and haddock (17") by recreational fishermen.

Response—By definition, groundfish which are sold cannot have been caught by "recreational fishing" as final regulations provide that "recreational fishing means fishing for groundfish with hand-held gear for any use except sale." Thus any groundfish which is sold must meet the minimum fish size specified for commercial fish in § 651.23, or its sale or purchase is prohibited under § 651.7. Thus no change in the regulations is necessary.

Comment—One commenter suggested that the words "enrolled and" should be removed from the definition of *vessel of the United States,* to clarify the definition and conform it with definitions in other regulations.

Response—The proposed change has been made. Proposed amendments to the Magnuson Act address this definition. The amendments, if adopted, will apply to all regulations and any other affected regulations will be modified.

Comment—The term "cod end" should be defined and read . . . "the terminal portion of an otter trawl, pair trawl, beam trawl, Scottish seine or mid-water trawl in which the catch is normally retained."

Response—This definition has been added to § 651.2.

Comment—The phrase "for a fee" should be added at the end of the definition of *charter and party boats* to make the meaning clear.

Response—This addition has been made § 651.2.

Comment—The phrase "with hand-held gear" should be added to the definition of *recreational fishing* to avoid confusion.

Response—This change has been made in § 651.2.

Comment—The regulations should state that special provisions of the vessel permits previously in effect which provided for use of small-mesh nets are no longer valid.

Response—Appropriate wording has been included in § 651.4(a), Vessel permits.

Comment—The reporting requirements for dealers in § 651.5, Recordkeeping and reporting requirements, should apply only to groundfish.

Response—The mandatory recordkeeping requirment for fish dealers and processors under § 651.5(a) has been deleted. The Interim Plan adopts the NMFS voluntary Three-Tier Fishery Information Collection System. The Three-Tier System does not contain this mandatory data collection element. Section 651.5 is reserved pending full implementation of the Three-Tier System.

Comment—Under § 651.6, Vessel identification, the clarification should be made that numerals should contrast with the background, not each other.

Response—The appropriate change has been made.

Comment—The Coast Guard suggested that under § 651.8(b), Signals, language should be added to explain alternate communication methods outlined in the International Code of Signals, should normal radio or telephone methods be ineffective. Also §651.8(c), Boarding, should be amended to reflect current practices more accurately and to accomodate fishermen.

Response—Wording suggested by the Coast Guard has been included.

Comment—The change to a 5–½ inch minimum mesh size requirement should be effective March 31, 1983, and not January 1, 1983, because the intent of the Council was to increase the permissible mesh size after one year of plan implementation.

Response—This correction has been made.

Comment—The regulations should not prohibit the use of midwater gear with small-mesh nets in the large-mesh area.

Response—Section 806, page 92, of the Interim Plan specifies that minimum mesh size requirements in effect for the large-mesh area apply to midwater gear. Therefore, this provision in the rules cannot be changed without an amendment to the Interim Plan.

Comment—One commenter stated that allowing smaller mesh in the body of the net than that required in the cod end could cause fishermen to shorten cod ends, so that they would be catching groundfish with less than legal-size mesh. The commenter suggested that a requirement for uniform mesh size throughout the trawl would solve this problem. However, comment received from the Council recommended that the requirement for 4–½ inch mesh size for the body of the trawl net be deleted from the final rule. The Council determined that there are many variations in trawl net designs; some have uniform mesh throughout while others use a graduated mesh size from the mouth to the taper of the net. Many other variations are commonly used. Normally, fishermen determine how small a mesh size to use in the body of the net based on the towing efficiency. Below a certain mesh size, depending upon the vessel, the operating efficiency of the vessel will decrease. The Council concluded that it is unlikely that any fisherman would use a mesh in the body of the net smaller than the 4–½ inch size, and thus it is unnecessary to include this requirement.

Response—The NMFS believes the minimum fish size requirements effectively nullify any advantage to be gained by fishing in an unconventional manner. The intended effect of the management measures is to reduce incentives for fishermen to harvest small fish. The NMFS notes that no unusual practices, such as shortening of cod ends, have been observed since implementation of the Interim Plan by emergency regulation. The added constraint of towing efficiency, noted by the New England Council, leads NMFS to agree that to require 4–½ inch mesh for the body of trawl nets is unnecessary. Therefore, this requirement is not in the final rule.

Comment—The Coast Guard recommended that use of chafing gear or net strengtheners on the cod ends of trawls be prohibited. The Council's intent was to allow chafing gear, but only if it would not obstruct or diminish the effective mesh size of the cod end.

Response—Appropriate wording clarifying the Council's intent on chafing gear limitations has been included in § 651.20(d), Large-mesh area and gear limitations.

Comment—The coordinates for Closed Area 1 in § 651.21, Closed areas, are incorrect.

Response—The coordinates demarcating Closed Area 1 were in error in the Interim Plan as first submitted by the Council, and in the proposed and emergency rules. The NMFS corrected the error in the emergency interim rule with publication of the corrected coordinates in the **Federal Register** on May 4. 1982 (47 FR 19151), a newsletter also publicized the corrected coordinates. The correct coordinates for Closed Area 1 are printed in these final regulations.

Comment—The metric equivalent of the 1.8 inch hook size exception for

Closed Area 1 should appear in the regulations.

Response—This has been inserted in § 651.21(b)(1).

Comment—The New England Council recommended that "landings" rather then "catch" be used as the basis for computing percentages in the optional settlement program. The Coast Guard recommended using "total catch" as the basis for such percentages as a means to prevent discards.

Response—The NMFS believes that to attempt to prevent discarding by basing percentages on "total catch" would be ineffective. Some discarding of undersized fish, or those taken in excess of allowed percentages, is inevitable because of the mixed species nature of the resource, and the nature of groundfish trawling operations. It is unrealistic to expect fishermen to invest valuable fishing time in order to inventory their catch of non-marketable fish. Such a requirement would not be cost-effective, would be unduly burdensome, and would probably encourage false reporting.

An important element of the Interim Plan's management strategy is to minimize discarding. A fisherman who knows that he cannot market undersized fish will be discouraged from setting on undersized fish. A fisherman in the optional settlement program cannot market cod, haddock, or yellowtail flounder in excess of the allowed percentages, and will be discouraged from fishing where cod, haddock, and yellowtail flounder are plentiful; minimization of discarding will result. The incentive to use the optional settlement program only for its intended purpose—to permit an exception to the mesh size requirement for the legitimate pursuit of small-mesh species—is enhanced by the percentage limits. However, the NMFS agrees with the Council that, as monitoring of catches will generally take place at dockside, there is no reason to attempt to distinguish "catch" from "total landings" as the basis for computing percentage limits. Therefore, the term "catch" is changed to "landings" in § 651.22 (e)(1) and (e)(2).

Comment—The Coast Guard requested that vessels operating under the optional settlement program be required to maintain a running "Fishing Vessel Record," available for inspection upon boarding. The New England Council objects to the "resurrection" of the logbook requirement.

Response—When the Director, Northeast Region, NMFS (Regional Director), agreed to establish an optional settlement program to permit pursuit of legitimate small-mesh fisheries in the large-mesh area, it was made clear that a mandatory catch-reporting system would necessarily be a part of that program. Consistent with the overall commitment of the Interim Plan to reduce burdensome recordkeeping—which often provoked non-compliance in the past—a "logbook" system was not included in the Interim Plan's management measures. Moreover, a logbook record would not be of practical value in enforcing the optional settlement program. Weighing fish on board enforcement vessels is virtually impossible. Further, enforcement officers cannot determine at sea what a vessel's total catch of various species will be during an optional settlement program participation period. The NMFS expects that the Coast Guard's primary enforcement efforts will be in monitoring mesh area and size requirements, and spawning area closures. The mandatory reporting requirements were deliberately kept as simple as possible. NOAA Form 88–154 was approved for mandatory collection by the Office of Management and Budget (OMB), and has been printed on the back of the optional settlement agreement form. The NMFS' experience during the period of emergency regulations indicates that this reporting system is not burdensome to the fishermen and no adverse comments were received. No change in this section is made in the final regulations except to correct the number of the NOAA form used for the mandatory reporting and to indicate correctly that the landing limitation on groundfish is no more than 15 percent of the total landings.

Comment—One commenter stated that the use of small-mesh gear under the optional settlement program will lead to excessive discards of small groundfish. The failure to require mandatory reporting of discards will result in an incomplete picture of fishing mortality.

Response—As stated above, the NMFS and the Council believe the most effective way to deal with the problem of discards is to remove the incentive to catch small groundfish. In addition, the NMFS uses several sources of information, other than fishermen's records, to make determinations about fishing mortality and the status of the resource. Moreover, if fishermen were capturing excessive numbers of small groundfish under a mandatory discard-reporting system, it is highly unlikely that they would report such discards willingly or accurately for fear of further regulation.

Comment—One commenter questioned the wisdom of allowing vessels not in the optional settlement program to have small-mesh nets on board; it was thought that such vessels may use small-mesh gear if enforcement efforts are low.

Response—The New England Council voted to allow vessels to keep nets of various mesh sizes on board after considering the diversity of legitimate fishing practices by domestic fishermen. This was an issue specifically considered by the Council and resolved by formal Council vote in the process of adopting the Interim Plan. Consequently, this provision in the regulations remains unchanged.

Comment—One commenter suggested that the minimum participation period for the optional settlement program be reduced from a minimum of 30 days to 2 weeks, as the longer the participation period, the more difficult it is to calculate and remain within allowed landing percentages. With a shorter participation period, discarding of groundfish toward the end of a declared optional settlement period would be minimized. Costal fishermen from Maine and the Maine Department of Marine Resources commented that the minimum 30-day participation period is too inflexible for their fishing operations, and makes it impossible to stay within the 15 percent maximum groundfish limitation or the 50 percent minimum reguirement for listed small-mesh species. The State of Maine suggested that fishermen be released from the optional settlement program requirements by a telephone call declaring their intent to carry only large mesh on board, rather than smaller or multiple mesh sizes. The State of Maine and the Commonwealth of Massachusetts added that, ideally, the latitude to change from small to large mesh daily, or even within a trip, is preferable. The operators of several offshore trawlers from Massachusetts noted the inflexibility of the 30-day minimum. Some offshore vessel fishermen suggested that they be permitted to withdraw from the program by radioing their fishing position and declaring their intent to change to large mesh. The comments of the Council also supported a shorter minimum period, and stated that the Council's intent was to impose a turn-around time for entry to and exit from the program that is as brief as possible.

Response—The NMFS agrees that the 30-day minimium participation period may be burdensome in light of fishing practices and the rapidly changing availablility of the different species. The objective of the NMFS is to allow fishermen as much flexibility as possible to pursue small-mesh species or to

withdraw from the optional settlement program, without eroding the effectiveness and enforceability of the large-mesh area. The NMFS considered all suggestions and a number of alternatives. Suggestions that the participation period be ended by telephone or radio communication of intent to change to large mesh were not adopted, as monitoring of participation and withdrawal would be impossible and the possibilities for abuse of the program would be increased. The NMFS believes that the balance between control and flexibility is best achieved by shortening the 30-day minimum participation period to a 7-day minimum period. With this revision, a vessel could enter the optional settlement program for as few as 7 days. The shorter participation period should facilitate compliance with the 15 percent groundfish landing allowance because fishermen can better estimate their total landings over a 7-day period. Also, if fishing or market conditions should change, making groundfish a highly desirable directed fishery, fishermen would have no longer than 7 days to wait before they could redirect their fishing effort. The six-month maximum participation period still applies.

Two other revisions have been made in the regulations in addition to those made in response to public comments. First, § 651.20(a) is revised to correct improper labeling of the paragraph subdivision. Second, a reference is added in § 651.1, to the consultative role of the Mid-Atlantic Fishery Management Council during development of the Interim Plan.

Classification

The NOAA Administrator determined on March 11, 1982 (47 FR 10605) that these regulations are non-major under Executive Order 12291 but that they will have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. These regulations were reviewed by OMB under proposed rulemaking on March 11, 1982, and subsequently implemented for two consecutive 45-day periods under emergency interim rulemaking (47 FR 13357 and 47 FR 20781). This final rulemaking implements these regulations for the effective period of the Interim Plan, unless otherwise amended.

A final Regulatory Impact Review (RIR) was prepared to describe the economic impacts and reporting requirements of the selected and alternative regulatory options. The RIR also incorporates the final Regulatory Flexibility Analysis (RFA) describing the expected impact of the regulations on small entities. Comments received on the draft RIR were considered in preparing the final RIR. The preamble to the proposed regulations incorrectly stated that the final RFA would be published with the final regulations. Notice is hereby given that copies of the final RIR (containing the final RFA) are available from the New England Fishery Management Council at the address above.

In accordance with the National Environmental Policy Act (NEPA), draft and final environmental impact statements were prepared and filed with the Environmental Protection Agency (EPA). The draft Environmental Impact Statement was filed on November 13, 1982; public comments were received until January 4, 1982. The final Environmental Impact Statement (FEIS) was filed with the EPA on June 11, 1982. The FEIS is also available to the public from the New England Fishery Management Council.

The Assistant Administrator for Fisheries, NOAA, finds that good cause exists to waive the 30-day delayed effectiveness period prescribed by the Administrative Procedure Act. To postpone the effective date of the final regulations until expiration of the delayed effectiveness period would cause an excessive interruption between expiration of the emergency interim rule and the effective date of final regulations. For this reason, the Assistant Administrator has found that it would be contrary to the public interest to delay implementation of these regulations.

Collection of fishery data reported voluntarily under the Three-Tier System will use NOAA form 88–30 which has been approved by the Office of Management and Budget (OMB); the OMB approval number is 0648–0013. There is a minimum amount of mandatory recordkeeping which constitutes "collection of information" under the Paperwork Reduction Act. Fishermen operating in the optional settlement program are required to report landings during their participation in the program. NOAA form 88–154 will be used for this purpose. It has been approved under OMB number 0648–0013.

List of Subjects in 50 CFR 651

Fish, Fisheries, Reporting requirements.

Dated: September 29, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, Part 651 of Title 50 of the Code of Federal Regulations is revised as set forth below:

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 651.1 Purpose and scope.

The regulations in this Part govern fishing for groundfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises fishery management authority. These regulations implement the Interim Fishery Management Plan for Atlantic Groundfish prepared and adopted by the New England Fishery Management Council, in consultation with the Mid-Atlantic Fishery Management Council, and approved by the Assistant Administrator.

§ 651.2 Definitions.

Some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations. In addition to the terms defined in the Magnuson Act, the terms used in this Part shall have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where goundfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administraton (NOAA), Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C., 20235, or a designee.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the United States Coast Guard;

(2) Any Special Agent of the National Marine Fisheries Service;

(3) Any officer deputized by the head of any Federal or State Agency which

has entered into an agreement with the Secretary and the Commandant of the United States Coast Guard to enforce the provisions of the Magnuson Act; or

(4) Any United States Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish on board a vessel.

Charter and party boats means vessels carrying fishing parties on a per capita basis, or by charter for a fee.

Cod end means the terminal portion of an otter trawl, pair trawl, bean trawl, Scottish seine or mid-water trawl in which the catch is normally retained.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing means any activity other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described above.

Fishing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type which is normaly used for: (a) Fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Groundfish means any cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), or yellowtail flounder (*Limanda ferruginea*).

Land means to begin offloading fish, to offload fish, or to arrive in port with the intention of offloading fish.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882.

Official number means the documentation number issued by the United States Coast Guard or the certificate number issued by a State or the Coast Guard for undocumented vessels in accordance with the Federal Boating Safety Act of 1971.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in paragraph (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for groundfish with handheld gear for any use except sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Party and charter boats are not considered recreational fishing vessels.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, NOAA, or a designee.

Secretary means the Secretary of Commerce or a designee.

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under the Magnuson Act.

Vessel of the United States means:

(1) Any vessel officially documented or numbered by the U.S. Coast Guard under U.S. law; or

(2) Any vessel under five net tons, which is registered under the laws of any State.

§ 651.3 Relation to other laws.

Fishing for herring, squid, mackerel and butterfish, which is affected by these regulations, is also governed by other domestic regulations under Chapter VI, Title 50 of the Code of Federal Regulations.

§ 651.4 Vessel permits.

(a) *General.* Any vessel of the United States fishing for groundfish, except recreational fishing vessels, must have a permit required by this Part on board the vessel. The special provisions for the use of small mesh nets contained in some permits issued prior to March 31, 1982, are no longer valid.

(b) *Application.* (1) An application for a fishing vessel permit for the groundfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port, gross tonnage, and net tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type and quantity of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 30 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within ten days following the date of notification, the application will be considered abandoned.

(d) *Expiration.* A permit expires when the owner or name of the vessel changes.

(e) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under 50 CFR Part 621.

(f) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(h) *Transfer.* Permits issued under this Part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(i) *Display.* Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit must be prominently displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(j) *Revocation.* Subpart D of 50 CFR Part 621 governs the imposition of

sanctions against a permit issued under this Part. As specified in Subpart D, a permit may be revoked, modified, or suspended if the vessel for which the permit is issued is used in the commission of an offense prohibited by the Magnuson Act or by this Part; or if a civil penalty or criminal penalty imposed under the Magnuson Act is not satisfied.

(k) *Fees.* No fee is required for any permit under this Part.

(l) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change.

(m) *Optional settlement program.* Any permit holder may request entry into the optional settlement program (§ 651.22) by telephoning 617–281–4454. The permit holder must give his/her name, permit number, and the starting and ending dates for participation in the program.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this Part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* The official number must be permanently affixed to each vessel subject to this Part. Numbers must contrast to the background and be in block Arabic numerals at least 18 inches in height for vessels over 65 feet, and at least 10 inches in height for all other vessels over 25 feet in length. The length of a vessel, for purposes of this section, shall be that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each vessel subject to this Part shall:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for groundfish.

§ 651.7 Prohibitions.

It is unlawful for any person to:

(a) Fish within the large-mesh area specified in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b) or (c), unless the vessel is registered in the optional settlement program established under § 651.22;

(b) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(c) While fishing in closed areas I or II, employ any modification to any gear that would, in effect, make it possible to fish for groundfish;

(d) Retain on board, land, or possess any groundfish smaller than the minimum sizes specified in § 651.23.

(e) Use any vessel, other than a recreational fishing vessel, for taking, catching, harvesting, or landing any groundfish unless the vessel has a valid permit required under this Part, and the permit is aboard the vessel;

(f) Fail to report to the Regional Director, within 15 days, any change in the information contained in a permit application for a vessel;

(g) Falsify or fail to make, keep, or maintain any record or report required by this Part;

(h) Refuse to permit an Authorized Officer to make inspections, to inspect or copy any record relating to the taking, catching, harvesting, landing, purchase, or sale of any groundfish;

(i) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any fish;

(j) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, or export any groundfish taken in violation of the Magnuson Act, this Part, or any other regulation promulgated under the Magnuson Act;

(k) Fail to affix and maintain permanent or nonpermanent markings as required by § 651.6;

(l) Refuse to permit an Authorized Officer to board a fishing vessel, or to enter areas of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this Part, or any other regulation promulgated under the Magnuson Act;

(m) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any Authorized Officer in the conduct of any inspection or search described in paragraph (l) of this section;

(n) Resist a lawful arrest for any act prohibited by this Part;

(o) Interfere with, delay, or prevent by any means the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this Part;

(p) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing the Magnuson Act;

(q) Fail to comply with enforcement and boarding procedures specified in § 651.8;

(r) Transfer directly or indirectly, or attempt to so transfer, any U.S.-harvested fish to any foreign fishing vessel within the FCZ unless the foreign vessel has been issued a permit which authorizes the receipt by such vessel of U.S.-harvested fish of the species concerned;

(s) Violate any provision of the optional settlement program specified in § 651.22; or

(t) Violate any other provision of this Part, the Magnuson Act, or any other regulation promulgated under the Magnuson Act.

§ 651.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The VHF–FM radiotelephone is the normal method of communicating between vessels. However, visual methods or loudhailer may also be used. The following signals extracted from U.S. Hydrographic Office Publication, H.O. 102 International Code of Signals may be communicated by flashing light or signal flags:

(1) "L" means "You should stop your vessel instantly."

(2) "SQ3" means "You should stop or heave to; I am going to board you."

(3) "AA AA AA etc.," means "call to an unknown station or general call." The operator should respond by identifying his vessel by radio, visual signals, or by illuminating his official number.

(4) "RY–CY" means "you should proceed at low speed. A boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit

the Authorized Officer and the boarding party to come aboard;

(2) Provide a ladder, illumination, and a safety line when necessary or requested by the Authorized Officer to facilitate boarding and inspection; and

(3) Take such other actions as the Authorized Officer deems necessary to ensure the safety of the Authorized Officer and the boarding party and to facilitate the boarding.

§ 651.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions of the Magnuson Act, and to Parts 620 (Citations) and 621 (Civil Procedures) of this title, and other applicable Federal law.

Subpart B—Management Measures

§ 651.20 Large-mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within an area, which is bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(1) The point at which a line drawn on 69° 20'W longitude intersects the outer boundary of the territorial sea;

(2) 43° 40'N. latitude, 69° 20'W. longitude;

(3) 43° 40'N. latitude, 69° 40'W. longitude;

(4) 41° 50'N. latitude, 69° 40'W. longitude;

(5) 41° 50'N. latitude, 69° 30'W. longitude;

(6) 41° 40'N. latitude, 69° 30'W. longitude;

(7) 41° 40'N. latitude, 69° 20'W. longitude;

(8) 41° 30'N. latitude, 69° 20'W. longitude;

(9) 41° 30'N. latitude, 68° 40'W. longitude;

(10) 41° 40'N. latitude, 68° 40'W. longitude;

(11) 41° 40'N. latitude, 68° 30'W. longitude;

(12) 41° 50'N. latitude, 68° 30'W. longitude;

(13) 41° 50'N. latitude, 68° 10'W. longitude;

(14) 42° 00'N. latitude, 68° 10'W. longitude;

(15) 42° 00'N. latitude, 67° 40'W. longitude;

(16) 42° 10'N. latitude, 67° 40'W. longitude;

(17) 42° 10'N. latitude, 66° 00'W. longitude;

(18) 41° 00'N. latitude, 66° 00'W. longitude;

(19) 41° 00'N. latitude, 67° 00'W. longitude;

(20) 40° 50'N. latitude, 67° 00'W. longitude;

(21) 40° 50'N. latitude, 67° 40'W. longitude;

(22) 40° 30'N. latitude, 67° 40'W. longitude;

(23) 40° 30'N. latitude, 70° 00'W. longitude;

and the point where a line drawn on 70° 00'W. longitude intersects the outer boundary of the territorial sea south of Nantucket Island. The shoreward boundary of the large-mesh area is the outer boundary of the territorial sea.

(b) *Trawl nets.* Except as provided for in § 651.22, the minimum mesh size for any trawl net or scottish seine used by a vessel fishing in the large-mesh area described in paragraph (a) of this section is 5⅛ inches in the cod end until March 31, 1983. Beginning on March 31, 1983, the minimum cod end mesh size will be 5½ inches.

(c) *Gill nets.* Except as provided for in § 651.22, the minimum mesh size for any gill net used by a vessel fishing in the large-mesh area described in paragraph (a) of this section is 5½ inches.

(d) *Mesh measurements.* (1) Cod end mesh sizes are measured when wet after use by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the after-end and running parallel to the long axis.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the underside of the cod end to reduce wear and prevent damage. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

§ 651.21 Closed areas.

(a) *General.* Except as allowed by paragraph (b) of this section, no person may fish within the following areas during the months of March, April, and May:

(1) An area known as Closed Area I, bounded by straight lines (rhumb lines) connecting the following coordinates in the order stated:

(i) 41° 50'N. latitude, 69° 40'W. longitude;

(ii) 40° 53'N. latitude, 68° 58'W. longitude;

(iii) 41° 35'N. latitude, 68° 30'W. longitude;

(iv) 41° 50'N. latitude, 68° 45'W. longitude;

(v) 41° 50'N. latitude, 69° 40'W. longitude;

(2) An area known as Closed Area II bounded by straight lines connecting the following coordinates in the order stated:

(i) 42° 20'N. latitude, 67° 00'W. longitude;

(ii) 41° 15'N. latitude, 67° 00'W. longitude;

(iii) 41° 15'N. latitude, 65° 40'W. longitude;

(iv) 42° 00'N. latitude, 65° 40'W. longitude;

(v) 42° 20'N. latitude, 66° 00'W. longitude;

(vi) 42° 20'N. latitude, 67° 00'W. longitude;

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Longline vessels that fish in Closed Area I with hooks having a gape of not less than 1.18 inches (30 mm).

(2) Vessels that fish in Closed Area I or II using only the following fishing gear:

(i) Pot gear designed and used to take lobsters; or

(ii) Dredges designed and used to take scallops.

§ 651.22 Optional settlement program.

(a) *General.* The Regional Director will establish and implement an optional settlement program to allow fishing vessels to engage in legitimate small-mesh fisheries within the large-mesh area defined in § 651.20(a). The Regional Director will maintain a list of small-mesh species to which the optional settlement program applies. He may add a species to the list if he finds that fishing for that species requires small-mesh gear and does not result in a significant harvest of groundfish. Notice of addition to the list will be mailed to all permit holders.

(b) *Entry.* (1) Any person holding a valid Federal groundfish permit may apply to fish under the optional settlement program by following the procedures set forth in § 651.4(m).

(2) The period of participation must be for at least 7 days, but not longer than six months. There is no limit on the number of times a vessel can apply to participate in the optional settlement program.

(c) *Certification.* (1) The Regional Director may certify in writing the entry of the applicant into the optional settlement program. Entry may be denied to an applicant based upon previous violations of the Magnuson Act or these regulations. Any applicant denied entry into the optional settlement program may request a hearing. The hearing will be conducted in accordance with the procedures of 50 CFR 621.56. Mail requests to the Assistant Administrator for Fisheries, NMFS, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(2) Entry of the applicant into the optional settlement program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the optional settlement program may begin after the applicant has received the certification from the Regional Director, provided that a copy of the certification is retained on board the vessel and displayed for inspection in the pilot house of the vessel, or in another appropriate place.

(e) *Limitations.* (1) During the participation period, the total landings of a participating vessel must be at least 50 percent by round weight of the species on the Regional Director's list under § 651.22(a).

(2) During the participation period, a participating vessel may not land groundfish in quantities exceeding 15 percent of its total landings. This means that the combined total landings of cod, haddock, and yellowtail flounder cannot exceed 15 percent of the vessel's total landings, regardless of the area of the Northwest Atlantic in which they were caught.

(3) The Regional Director may increase this allowed percentage of combined cod, haddock, and yellowtail flounder landings by publication in the **Federal Register** if he finds that a different percentage is necessary to conduct the small-mesh fisheries.

(f) *Recordkeeping and reporting.* Within one week from the expiration of the participation period or withdrawal from the program under paragraph (g), or receipt of a notice of revocation under paragraph (h), the participant shall mail or deliver to the Regional Director a NOAA Form 88–153 "Fishing Vessel Record" listing, in pounds, all fish landed during the participation period. The participant shall maintain landing records throughout the participation period, and, if requested, shall present such records to any Authorized Officer within a reasonable time, not to exceed two working days.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period specified by the participant under § 651.4(m), or when the owner or vessel name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of the applicant in the optional settlement program by issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and take effect upon receipt by the participant. Any applicant whose certification is revoked may request a hearing. The hearing will be conducted in accordance with the procedures of 50 CFR 621.56. Mail requests to the Assistant Administrator for Fisheries, NMFS, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

§ 651.23 Minimum fish size.

(a) The minimum size (total length) for any groundfish is;

(1) *Commercial.*

Cod and haddock: 17 inches
Yellowtail flounder: 11 inches.

(2) *Recreational fishing vessels, charter and party boats.*

Cod and haddock: 15 inches
Yellowtail flounder: 11 inches.

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

[FR Doc. 82–27230 Filed 9–29–82; 3:46 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 47, No. 192
Monday, October 4, 1982

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

FEDERAL AVIATION ADMINISTRATION

14 CFR Part 71

[Airspace Docket No. 82-ASO-49]

Proposed Alteration of Transition Area, Tupelo, Mississippi

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to increase the size of the Tupelo, Mississippi, Transition Area to accommodate Instrument Flight Rule (IFR) operations at Industrial Airpark. This action will lower the base of controlled airspace from 700 to 1,200 feet above the surface. An instrument approach procedure, based on the Tupelo VOR, has been developed to serve Industrial Airpark and additional controlled airspace is required to protect IFR operations.

DATES: Comments must be received on or before November 10, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASO-49." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Tupelo, Mississippi, 700-foot Transition Area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure at Industrial Airpark. If the proposed alteration of the Transition Area is found acceptable, the airport operating status will be changed from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Tupelo, MS—Revised

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of C.D. Lemons Municipal Airport (lat. 34°15'32"N., long. 88°45'32"W.); within 3 miles each side of the Tupelo VOR 214° radial, extending from the 6.5-mile radius area to 8.5 miles southwest of the VOR; within 5.5-mile radius of Industrial Airpark (lat. 34°10'36"N., long. 88°41'18"W.).

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

Issued in East Point, Georgia, on September 21, 1982.

S. Oberlander,

Acting Director, Southern Region.

[FR Doc. 82-27218 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ANM-10]

Proposed Alteration Control Zone and Transition Area—Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of the Astoria, OR, transition area. A Standard Instrument Approach Procedure (SIAP) with Distance Measuring Equipment (DME) is being designated for runway 13 at Astoria Airport. In order to provide controlled airspace for the approach, the current 700-foot transition area would be extended to provide adequate controlled airspace. Also, this alteration would permit considerable reduction to the northwest extension of the control zone.

DATES: Comments must be received on or before November 3, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Northwest Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 82–ANM–10, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, WA 98108.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions 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) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82–ANM–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of the Astoria control zone. A new DME has been commissioned at Astoria. A VOR/DME instrument approach procedure is being designated for Runway 13. The new procedure will require extension of the present 700-foot Astoria transition area. This action would permit more efficient use of that airspace, lower the minimum altitudes and aid flight planning. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.171 [Amended]

Astoria, OR [REVISED].

"Within a 5-mile radius of the Clatsop County Airport, Astoria, OR, (lat. 46°09'31"N., long. 123°52'42"W.); and within 2 miles each side of the Astoria VOR 268° radial, extending from the 5-mile radius zone to 8 miles west of the VOR."

§ 71.181 [Amended]

Astoria, OR [REVISED].

"That airspace extending from 700 feet above the surface within a 5-mile radius of the Clatsop County Airport, Astoria, OR, (lat. 46°09'31"N., long. 123°52'42"W.) within 4.5

miles north and 9.5 miles south of the Astoria VOR 268° radial, extending from the 5-mile radius area to 18.5 miles west of the VOR, excluding the portion within a 2-mile radius of the Seaside State Airport (lat. 46°01'00"N., long. 123°54'15"W.); within 4.5 miles northeast and 9.5 miles southwest of the Astoria VOR 326° radial, extending from the 5-mile radius area to 24.5 miles northwest of the VOR; and within an 18.5-mile radius arc of the Astoria VOR/DME extending clockwise from the 326° radial to the 039° radial."

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9596); 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on September 22, 1982.

B. Keith Potts,

Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82-27220 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Chapter III

[Docket No. 2925-190]

Request for Comments on Effects of Foreign Policy Export Controls

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: Section 6 of the Export Administration Act of 1979 provides that export controls imposed for foreign policy reasons expire one year after imposition unless extended. In preparation for revision or extension of controls on January 20, 1983, the Department is seeking comments on how controls imposed or extended effective January 1, 1982, and subsequently, have affected exporters and the general public.

DATE: Comments should be received by December 3, 1982 to assure full consideration in formulation of control policies.

ADDRESS: Written comments (six copies when possible) should be sent to: Mr. Richard J. Isadore, Director, Operations Division, Office of Export Administration, P.O. Box 273, U.S. Department of Commerce, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: J. Robert Cutter, Chief, Special Programs Branch, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377-4275.

SUPPLEMENTARY INFORMATION: The Export Administration Act of 1979 establishes criteria for the imposition, extension, or expansion of foreign policy export controls. Subsection 6(a)(2) of the Act provides that:

Export controls maintained for foreign policy purposes shall expire * * * one year after imposition, * * * unless extended * * * Any such extension and any subsequent extension shall not be for a period of more than one year.

For administrative reasons, the Department reviews and extends all foreign policy controls on a uniform date, notwithstanding that certain controls imposed during the year otherwise would expire on their anniversary date.

Foreign policy controls were extended or modified on March 1, 1982, to be effective through January 20, 1983. Controls remain in effect at this time covering human rights, South Africa and Namibia, anti-terrorism, regional stability, embargoed communist countries, oil and gas equipment for the Soviet Union and Afghanistan, transactions related to the 1980 Summer Olympics, truck manufacturing equipment for the Soviet Kama River and ZIL truck plants, and suspension of processing of license applications for the Soviet Union. Nuclear nonproliferation controls continue in effect pursuant to section 17(d) of the Act and section 309(c) of the Nuclear Nonproliferation Act of 1978 (See 15 CFR Part 378).

Two changes in the foreign policy controls were made during the year. Effective March 12, 1982, foreign policy controls on exports to Libya were expanded to require a validated license for all commodities and technical data except medicine and medical supplies, food and agricultural commodities, nonstrategic foreign-produced direct products of U.S. origin technical data, and items permitted under certain special purpose general licenses. The objective was to restrict the U.S. contribution to Libyan capacity to engage in activities detrimental to U.S. foreign policy.

Additionally, at the direction of the President, export controls on oil and gas goods and technology to the USSR were amended, effective June 22, 1982, to include exports of non-U.S. origin goods and technical data by U.S.-owned or controlled foreign companies, as well as certain foreign-produced products of U.S. technical data not previously subject to controls. Parties who commented on these controls during 1982 need not repeat their comments; comments the Department has already received on the Libyan and Soviet amendments will be considered during the foreign policy review.

To assure maximum public participation in the review process, comments on the extension or revision of these existing foreign policy controls are solicited.

The Act requires the following criteria to be considered when imposing, expanding, or extending foreign policy export controls:

(1) The probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such control;

(2) The compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) The reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) The likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) The ability of the United States to enforce the proposed controls effectively; and

(6) The foreign policy consequences of not imposing controls.

The Department is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on

economic impact and specific instances of business lost to foreign competitors.

Parties submitting comments are asked to be as specific as possible. However, respondents are reminded that the Department is soliciting only information that may be used publicly. No "confidential business information" will be accepted. Any information so designated will be returned to the commenter.

All comments received before the close of the comment period will be considered by the Department in the development of final regulations.

While comments received after the close of the comment period will be considered if possible, their consideration cannot be assured.

All public comments will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda that will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not routinely be made available for public inspection.

The public record concerning these comments will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration's Freedom of Information Officer, at the above address or by calling (202) 377–3031.

(Sections 6 and 13, Pub. L. 96–72, 93 Stat 503, 50 U.S.C. app. 2401 *et seq.;* Executive Order No. 12214 (45 FR 29783, May 6, 1980))

Dated: September 28, 1982.

John K. Boidock,

Director, Office of Export Administration International Trade Administration.

[FR Doc. 82-27292 Filed 10-1-82; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 19, 24, 113, 125, 141, 142, 143, 144, and 146

Proposed Customs Regulations Amendments To Revise Customs Form 7501 and To Replace Other Forms

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend various parts of the Customs Regulations to provide for the use of a revised Customs Form 7501 and the elimination of other forms.

In addition to containing all of the data elements necessary for the assessment of duty and collection of import statistics, the revised Customs Form 7501, the "Entry Summary," would replace the following Customs Forms:

1. Customs Forms 7501, 7501A, 7501B, 7501C, the "Consumption Entry;"

2. Customs Forms 7502, 7502A, 7502B, 7502C, the "Warehouse or Rewarehouse Entry;"

3. Customs Form 5101, the "Entry Record;"

4. Customs Form 5119–A, the "Informal Entry" (Only the non-serially numbered 4-part carbon salable form used by the importer would be replaced. The serially numbered Customs Form 5119–A would be retained; and

5. Customs Form 7500, the "Appraisement Entry."

This document presents a draft of the revised Customs Form 7501 and instructions as well as the proposed regulations changes. Customs request public comments on each aspect.

The purpose of this proposal is to improve the procedures used by Customs for the entry of imported merchandise and the collection of statistics, and to reduce the paperwork burden on the importing community by eliminating forms and assuring that only necessary information will be collected.

DATE: Comments must be received on or before December 3, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, Attention: Regulations Control Bureau, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Herbert H. Geller, Duty Assessment Division, (202–566–5307); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Public Law 95–410 (92 Stat. 888), the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 (the "Act"), made significant changes in the Customs laws relating to the entry of imported merchandise. A document amending the Customs Regulations to establish new procedures needed to reflect these changes was published as T.D. 79–221 in the **Federal Register** on August 9, 1979 (44 FR 46794).

Section 102 of the Act amended section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), by providing that entry shall be made by filing that documentation necessary to enable Customs to determine whether the merchandise may be released from Customs custody. Section 102 also provided that documentation necessary to classify and appraise merchandise and to verify statistical information shall be filed at the time prescribed by regulation, either when entry is made, or at any time within 10 working days thereafter. Furthermore, section 102 provided for the issuance of regulations to ensure the accuracy and timeliness of statistics under the new entry procedures, particularly statistics with regard to the classification and value of imports.

One of the changes made by T.D. 79–221 involved the revised entry concept. The entry of imported merchandise is a 2-part process consisting of (1) filing the documentation necessary to determine whether merchandise may be released from Customs custody, and (2) filing the documentation which contains information for duty assessment and statistical purposes.

Section 141.0a(a), Customs Regulations (19 CFR 141.0a(a)), defines "entry" to mean that documentation required by § 142.3, Customs Regulations (19 CFR 142.3), to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation. Section 141.0a(b)), Customs Regulations (19 CFR 141.0a(b), defines "entry summary" to mean any other documentation necessary to enable Customs to assess duties and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

Entry summary documentation is required to be filed within 10 working days after the "time of entry" as defined

in § 141.68, Customs Regulations (19 CFR 141.68).

Section 142.3(a)(1), Customs Regulations (19 CFR 142.3(a)(1)), provides that the entry documentation required to secure the release of merchandise shall consist of Customs Form 3461 (also used currently as an application for special permit for immediate delivery), appropriately modified, or Customs Form 7533, appropriately modified, in place of Customs Form 3461 for merchandise imported from a contiguous country.

Section 142.11(a), Customs Regulations (19 CFR 142.11(a)), states that entry summary shall be on (1) Customs Form 7501 for both merchandise formally entered for consumption, and formally entered under a temporary importation bond; (2) Customs Form 3311 for merchandise which may be entered free of duty; and (3) Customs Form 7502 for warehouse entries.

Section 142.3(b), Customs Regulations (19 CFR 142.3(b)), provides that when the entry summary is filed at the time of entry, Customs Forms 3461 or 7533 shall not be required, and Customs Form 7501, 7502, or 3311 shall serve as both the entry and entry summary documentation.

For merchandise entitled to be entered under an informal entry, Customs Form 5119–A, or Customs Form 7501, appropriately modified, may be used.

Accordingly, under the regulations, various Customs forms may be used for the entry of imported merchandise depending upon the circumstances. However, in light of the changes in the entry procedures necessitated by the Act, Customs believes it would be beneficial to the importing community and the Government if Customs Form 7501 were revised to improve the procedures for entering imported merchandise and at the same time, eliminate other Customs forms. The revised form would be a critical element in achieving national uniformity in entry processsing.

Furthermore, revising Customs Form 7501 and eliminating other forms would be consistent with the ojectives of the "Paperwork Reduction Act of 1980" (Pub. L. 96–511, December 11, 1980). In this regard, this project would help assure that Customs collects only necessary information from the public and eliminates those burdens which are found to be unnecessary and wasteful.

Therefore, this document proposes to amend various parts of the Customs Regulations to provide for the use of a revised Customs Form 7501, the "Entry Summary," and the elimination of the following Customs Forms:

1. Customs Forms 7501, 7501A, 7501B, 7501C, the "Consumption Entry;"
2. Customs Forms 7502, 7502A, 7502B, 7502(C), the "Warehouse or Rewarehouse Entry;"
3. Customs Form 5101, the "Entry Record;"
4. Customs Form 5119–A, the "Informal Entry" (Only the non-serially numbered 4-part carbon salable form used by the importer would be replaced. The serially numbered Customs Form 5119–A would be retained. All references in the regulations to Customs Form 5119–A would mean the serially numbered form); and
5. Customs Form 7500, the "Appraisement Entry."

This document also presents a draft of the revised Customs Form 7501 (Attachment A to this document) and instructions explaining the use of this form (Attachment B to this document).

Comments are requested on (1) the proposed amendments to the Customs Regulations to reflect the use of the revised form and elimination of the current forms; (2) the format of revised Customs Form 7501 and instructions explaining the use of this form; and (3) the feasibility of using Optical Character Recognition (OCR) technology for input of entry summary data. An alternate Customs Form 7501 would be designed for the OCR application.

Prior Study

Initially, Customs intended to require the importer to file the revised Customs Form 7501 with specified blocks completed at the time of entry. The importer then would have been required to complete the Customs Form 7501 at the time of filing the entry summary documentation.

In this regard, on May 23, 1979, Customs published a notice in the **Federal Register** requesting comments on a revised Customs Form 7501 (T.D. 79–144, 44 FR 29916). In response, many commenters objected to the use of revised Customs Form 7501 as an entry document. Importers and brokers complained that the use of the revised Customs Form 7501 as an entry document would create problems in computer programming. They claimed this procedure would be impractical because they would be unable "to insert a form back into a printer which would no longer be on a continuous roll" They stated that such action would necessitate completion of the entire form at the time of filing entry summary documentation.

Other commenters objected to the size and positioning of certain blocks on Customs Form 7501, the limitation on the use of Customs Form 3461, and the anticipated implementation date.

Because of the complexity of the issues involved and the need for further study in light of the comments received, a notice delaying the effective date for implementing the use of revised Customs Form 7501 was published in the **Federal Register** on July 9, 1979 (T.D. 79–184, 44 FR 40075).

After continued study, Customs made certain changes in response to the objections raised by the commenters. The format of Customs Form 7501 has been modified, and the importer generally would not be required to file a partially completed Customs Form 7501 at the time of entry. Rather, Customs Form 3461 would continue to be the primary release document. Of course, under the circumstances specified in the regulations, such as (1) where the importer elects to file the entry summary documentation at the time of entry (19 CFR 142.12(a)), or (2) when the entry summary must be filed at the time of entry (19 CFR 142.13), the revised Customs Form 7501 must be completed at the time of entry.

Some automated importers and brokers objected to the initial proposal to revise Customs Form 7501 because they claimed it would be too expensive to reprogram their computers. Customs believes that expenses can be minimized by considering further suggestions of the importing community received both informally and in response to this notice.

One of the major concerns raised by the importers in response to the original notice was that sufficient time be provided to permit importers and brokers to reprogram computers, train personnel to use the revised form, and use existing stock of current Customs Forms 7501, 7502, 5101, 5119–A, and 7500.

Customs believes this consideration has merit. It is anticipated that the final regulations would not become effective until 60 days after publication of the Treasury Decision in the **Federal Register**. There would be a 12-month phase-in period after the effective date of the Treasury Decision during which time both the revised form and old forms may be used.

Discussion of Revised Customs Form 7501 And Use Of Each Related Part Of The Form

Each part of revised Customs Form 7501 (CF 7501) will be on a separate pad of 100 sheets each. The size of each sheet will be 8½" x 11".

1. CF 7501, Entry Summary, white copy—with reverse side for further declarations and authority to make entry for portion of consolidated shipment. The original is the official Customs entry document, with a minimum of two carbon copies—one for broker, one for importer. If all line items can not be contained on one CF 7501, it may be used as a continuation sheet, leaving the header information blank.

2. CF 7501, Entry Summary, Salmon color copy—statistical copy for Census Bureau, one copy, contains identical information as that on the white copy.

3. CF 7501, Entry Summary, Canary color copy—for Internal Revenue Service, one copy, contains identical information as that on the white copy, used to report amount collected for Internal Revenue taxes.

4. CF 7501–A, Entry Summary, Permit—white copy—does not contain block for Census Bureau use, missing documents, nor "Customs Use Only," but does have space for examination order and other action to be taken and for examination, sampling, weighing, etc., information certified by the inspector or other Customs officer. One copy in each entry package, or more if needed to accommodate the total line items.

5. CF 7501–B, Entry Summary, Continuation Sheet—white—(optional). The CF 7501 or the Continuation Sheet may be used if more space is needed to cover all line items. The same number of copies are required as for the CF 7501—minimum of three.

6. CF 7501–B, Entry Summary, Continuation Sheet—Salmon color copy—for statistical reporting. One copy is needed for Census Bureau purposes, if the Continuation Sheet is used in place of the CF 7501 salmon color copy.

7. CF 7501–B, Entry Summary, Continuation Sheet—Canary color copy—for Internal Revenue Service, one copy.

8. CF 7501–C, Entry Summary, Permit—white copy—Continuation Sheet (optional), used when more room is necessary to accommodate the number of line items and the CF 7501 has not been used in its place. One copy.

When the CF 7501 is used as an informal entry, only the following shaded blocks and columns are used: 4, 6, 9, 13, 17, 19, 20, 22, 24, 26, 27, 30a, 30b, 32, 33, 34, 35, 38, 39, 41, 43, 44.

The following two questions appear on the revised Customs Forms 7501:

1. Were there any rebates, drawbacks, fees, commissions or royalties, either paid or allowed, which are not reflected on the invoice?

2. Did the production of the merchandise involve the furnishing, either free of charge or at a reduced cost, of goods or services to the seller or manufacturer?

Similar questions appear on Customs Form 5515. A regulatory project has been initiated to eliminate Customs Form 5515.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); section 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95–410 (October 3, 1978); Pub. L. 96–511 (December 11, 1980).

Comments

Before adopting this proposal, consideration will be given to any written comment timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 601, *et seq.*), it is hereby certified that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, this document is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Although the revision of Customs Form 7501 will undoubtedly result in significant reprogramming costs for many brokers and importers who have automated systems, these costs will be generally incurred by large brokers and importers. Small brokers and importers generally do not have automated systems and those that have such systems tend to subscribe to computer service companies which will absorb or at least spread any increased costs among all users.

Customs requests comments on the economic impact of this proposal on small entities. Comments submitted should include estimates of the dollar impact and employment impact on small entities wherever possible in order to assist in measuring any economic impact.

E.O. 12291

These proposed amen. ments do not meet the criteria for a "major rule" specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This proposed project is subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Accordingly, this document is subject to clearance by the Office of Management and Budget.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Federal Register Thesaurus

On January 22, 1981, the Office of the Federal Register published a final rule (47 FR 7162) which requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms.

Accordingly, the index terms listed below are applicable to this regulatory project:

List of Subjects

19 CFR Part 10

Wildlife

19 CFR Part 19

Warehouse.

19 CFR Part 24

Accounting.

19 CFR Part 113

Surety bonds.

19 CFR Part 125

Freight forwarders.

19 CFR Part 141

Imports.

19 CFR Part 142

Imports.

19 CFR Part 143

Imports.

19 CFR Part 144

Warehouses.

19 CFR Part 146

Foreign-trade zones

Proposed Amendments

It is proposed to amend Parts 10, 19, 24, 113, 125, 141, 142, 143, 144, and 146, Customs Regulations (19 CFR 10, 19, 24, 113, 125, 141, 142, 143, 144, and 146), in the following manner:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

It is proposed to revise § 10.91 (a) to read as follows:

§ 10.91 Importation under item 306.00; entry or withdrawal under bond.

(a) The entry summary for wool or hair of the camel [82] imported for use in the manufacture of any of the articles enumerated in item 306.00, Tariff Schedules of the United States (TSUS),[83] shall be made on Customs Form 7501 and filed with the entry documentation listed in § 142.3(b) of this chapter before the merchandise shall be released. If the merchandise is to be entered for warehouse, the entry summary also shall be made on Customs Form 7501 and filed with the entry documentation listed in § 142.3(b) of this chapter. In either case, Customs Form 7501 shall serve as both the entry and the entry summary.

* * * * *

PART 19—CUSTOMS WAREHOUSES CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

§ 19.1 [Amended]

It is proposed to amend § 19.11(b) by inserting "7501" in place of "7502".

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. It is proposed to revise the fourth sentence of § 24.5(d) to read as follows:

§ 24.5 Filing identification number.

* * * * *

(d) *Optional additional identification.* * * * Transactions may be associated with a specific branch office or vessel by reporting the appropriate identification number, including the two-digit suffix code, on Customs Form 7501, or the request for services.

* * * * *

2. It is proposed to amend the first sentence of § 24.5(e) by inserting "7501" in place of "5101".

PART 113—CUSTOMS BONDS

It is proposed to revise § 113.41 to read as follows:

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the "Missing Documents" block on Customs Form 7501 the missing document, whether the importer gives bond on Customs Form 7551 or 7553, or other appropriate form, or stipulates to produce such document.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. It is proposed to revise § 125.31(b) to read as follows:

§ 125.31 Documents used.

* * * * *

(b) Customs Form 7501–A—Entry Summary (Permit).

* * * * *

2. It is proposed to revise § 125.32 to read as follows:

§ 125.32 Merchandise delivered to a bonded store or bonded warehouse.

When merchandise is carted or lightered to and received in a bonded store or bonded warehouse, the proprietor or his representive shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501–A, and countersign the document acknowledging receipt of the merchandise as listed thereon.

PART 141—ENTRY OF MERCHANDISE

1. It is proposed to revise § 141.61(a)(2) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation.* (1) * * *

(2) An importer may omit from the entry summary, Customs Form 7501, or the warehouse withdrawal for consumption, Customs Form 7505 or 7519, the marks and numbers previously provided for packages released or withdrawn.

* * * * *

2. It is proposed to revise § 141.61(d) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(d) *Importer number.* The importer number shall be reported on Customs Form 7501 as follows:

(1) *Generally.* Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and of the ultimate consignee shall be reported for each entry summary and for each drawback entry. When the importer of record and the ultimate consignee are the same, the importer number may be entered in both spaces provided on Customs Form 7501, or the importer number may be entered in the space provided for the importer and the word "same" may be entered in the space provided for the ultimate consignee.

(2) *Exception.* In the case of a consolidated entry summary covering the merchandise of more than one eltimate consignee, the importer number shall be reported on Customs Form 7501 and the notation "consolidated" shall be made in the space provided for the importer number of the ultimate consignee.

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent.* If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number shall be reported on Customs Form 7501 in the block designated "Reference No." In this case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(4) *Broker No.* If a broker is used, the broker's number also shall be reported in the appropriate block on Customs Form 7501. When the agent under paragraph (3) of this section and the broker are the same, the number may be entered in both spaces provided for on Customs Form 7501, or the number may be entered in the space provided for the agent's importer number and the word "same" may be entered in the space provided for the broker's number.

3. It is proposed to revise section 141.61(e)(1)(i)(A) to read as follows:

* * * * *

(e) *Statistical information.*—(1) *Information required on entry summary or withdrawal form.*—

(i) *Where form provides space*—(A) *Single Invoice.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA"), shall be shown on the entry summary, Customs Form 7501; the transportation entry and manifest of goods, Customs Form 7512, when used to document an incoming vessel shipment proceeding to a third country by means of an entry for transportation and exportation, or immediate exportation; the rewarehouse entry, Customs Form 7519; the manufacturing warehouse entry, Customs Form 7521; the withdrawal form, Customs Form 7505 or 7506, in the space provided. * * *

4. It is proposed to revise § 141.61(e)(1)(ii)(B) to read as follows:

* * * * *

(e) * * *

(1) * * *

(ii) *Where form does not provide space.* * * *

(B) The notation "R" for "related" or "N" for "not related," as appropriate, shall be placed in the block entitled

"Mfr./Seller/Shipper Rel." on Customs Form 7501, and at the top of columns 3, 4, and 5 of Customs Forms 7505, 7506, and 7521, and in the top right hand portion of Customs Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner specified in section 402(g)(2), Tariff Act of 1930, as amended (19 U.S.C. 1401a(g)(2)), or as one between a buyer and a seller who are not so related.

5. It is proposed to revise § 141.61(e)(1)(ii)(C)(1) to read as follows:

* * * * *

(e) * * *

(1) * * *

(ii) *Where the form does not provide space.* * * *

(C)(1) The transaction value, charges, and equivalent value shall be listed on Customs Form 7501 in column 31. The amounts shall be identified (in the following order) P (port of exportation transaction value), C (aggregate cost of freight, insurance, and all other charges), and E (Equivalent port of exportation value). The transaction value, charges, and equivalent value shall be listed on Customs Forms 7505, 7506, and 7521 in column 4 immediately below the TSUSA reporting number. These amounts shall be identified by placing (in the following order) PEXT (port of exportation transaction value), CHGS (aggregate cost of freight, insurance and all other charges), and EPEX (equivalent port of exportation value) in column 3 immediately below the entered value and to the left of each statistical value and charge.

* * * * *

6. It is proposed to revise the last sentence of § 141.61(f)(1)(iv) to read as follows:

* * * * *

(f) *Value of each invoice*—(1) *Single invoice.* * * *

(iv) * * * the required information shall be shown on a worksheet attached to the form or placed across columns 30a and 30b on Customs Form 7501 and in the same general location on Customs Forms 7505, 7506, 7519, and 7521.

§141.68 [Amended]

7. It is proposed to amend the first sentence of §141.68(h) by inserting "7501" in place of "7500".

PART 142—ENTRY PROCESS

1. It is proposed to amend section 142.3(b)(2) by removing "7502,".

2. It is proposed to revise § 142.11(a) to read as follows:

§ 142.11 Entry summary form.

(a) *Customs Form 7501.* The entry summary shall be on Customs Form 7501 unless a different form is prescribed elsewhere in this chapter. Customs Form 7501 shall be used for merchandise formally entered for consumption, formally entered for warehouse, or rewarehouse in accordance with § 144.11 of this chapter, and formally entered under a temporary importation bond under § 10.31 of this chapter. The entry summary for merchandise which may be entered free of duty in accordance with § 10.1(g) or (h) of this chapter may be on Customs Form 3311 instead of on Customs Form 7501. For merchandise entitled to be entered under an informal entry, see § 143.23 of this chapter.

* * * * *

3. It is proposed to revise the last sentence of § 142.16(a) to read as follows:

§ 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry.*

* * * The entry summary documentation also shall include any other documents required for a particular shipment unless a bond for missing documents is on file, as provided in § 141.66 of this chapter.

* * * * *

4. It is proposed to revise the last sentence of § 142.16(b) to read as follows:

§ 142.16 Entry summary documentation.

* * * * *

(b) *Entry summary filed at time of entry.* * * * The importer also shall file any additional invoice required for a particular shipment.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. It is proposed to revise § 143.12 to read as follows:

§ 143.12 Form of entry.

Application for an entry by appraisement shall be made in triplicate on the entry summary, Customs Form 7501.

2. It is proposed to revise the heading and text of § 143.24 to read as follows:

§ 143.24 Preparation of Customs Form 7501 and Customs Form 5119–A.

Customs Form 7501 may be prepared by importers or their agents or by Customs officers when it can be presented to a Customs cashier or acting cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier or acting cashier, Customs Form 5119–A must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importers or their agents for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with Part 142 of this chapter.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. It is proposed to revise § 144.11(a), (b), and (c) to read as follows:

§ 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the entry summary, Customs Form 7501, is filed at the time of entry for merchandise to be entered for warehouse, it shall serve as both the entry and the entry summary, and Customs Form 3461 or 7533 shall not be required. If the entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If merchandise is released before the filing of the entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7501.* The entry summary for merchandise entered for warehouse shall be executed in triplicate on Customs Form 7501, appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The district director may require an extra copy or copies of the Permit, Customs Form 7501–A, for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse.* The importer shall designate on the entry summary, Customs Form 7501, the bonded warehouse in which he desires his merchandise deposited and the bonded cartman or lighterman by whom he wishes the goods transferred.

* * * * *

§ 144.12 [Amended]

2. It is proposed to revise § 144.12 by inserting "7501" in place of "7502".

§ 144.14 [Amended]

3. It is proposed to revise the introductory paragraph of § 144.14 inserting "7501" in place of "7502".

§ 144.36 [Amended]

4. It is proposed to revise the first sentence of § 144.36(b) by inserting "7501" in place of "7502".

§ 144.41 [Amended]

5. It is proposed to revise § 144.41(b) and (d) to read as follows:

§ 144.41 Entry for rewarehouse.

* * * * *

(b) *Form of entry.* An entry for rewarehouse shall be made in duplicate on Customs Form 7501 and shall contain all of the statistical information as provided in section 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7501–A (Permit) for use in connection with the delivery of the merchandise to the warehouse. No declaration is required on the entry.

* * * * *

(d) *Bond.* A bond on Customs Form 7555 or other appropriate form shall be filed before a permit is issued on Customs Form 7501–A for sending the merchandise to the bonded warehouse. However, not entry shall be required if the merchandise is entered by the consignee named in the original warehouse entry bond filed at the original port of entry, or if it is entered by a transferee who has established his right to withdraw the merchandise and has filed a bond in accordance with subpart C of this part.

PART 146—FOREIGN-TRADE ZONES

§ 146.21 [Amended]

It is proposed to amend § 146.21(c) introductory text by inserting "7501" in place of "7502".

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: August 31, 1982.

Robert E. Powis,
Acting Assistant Secretary of the Treasury.

BILLING CODE 4820-02-M

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

This space for OMB approval citation.

ENTRY SUMMARY

19 CFR 10.31, 10.91, 10.104, 141.61, 141.68, 142.11, 143.12, 143.24, 144.11

1. CENSUS USE ONLY	2. Broker/Importer Transaction No.		3. Entry Identification Entry No. Date of Entry
	4. Entry Type and Entry Code		
	5. Broker No.	6. Port Code	
	7. Surety Code	8. Bond Code	

9. Importer of Record			10. Importer No.
11. Ultimate Consignee			12. Ultimate Consignee No.
13. Location of Goods G.O. No.	14. Containerized	15. Reference No.	16. Summary Date
17. B/L or AWB No.	18. Foreign Port of Lading		19. I.T. No. and Date
20. Importing Vessel (Name & Flag) or Carrier	21. Trans. Mode		22. I.T. From (Port)
23. Date of Export / 24. Exporting Country	25. U.S. Port of Unlading		26. I.T. Carrier (Delivering)
27. Date of Import / 28. Mfr./Seller/Shipper Rel.	29. Warehouse		

30. Description of Merchandise 30a. Country of Origin Gross Weight in Pounds	30b. Net Quantity in T.S.U.S.A. Units	31. (P) PEXT (C) CHGS (E) EPEX	32. Entered Value in U.S. Dollars	33. T.S.U.S.A. Reporting Number	34. Tariff or I.R.C. Rate	35. Duty and I.R. Tax Dollars	Cents

36. CUSTOMS USE ONLY	37. Missing Documents	38. Duty
		39. Tax
	40. I.S. Team/Liq. Code	41. Other
42. DECLARATION I declare that I am the ☐nominal consignee and that the actual owner for customs purposes is as shown above, or ☐consignee or agent of the consignee.	43. Authentication	44. Total
I further declare that the merchandise ☐was or ☐was not obtained in pursuance of a purchase or agreement to purchase. I also include in my declaration all the statements in the declaration on the back of this entry summary.	45. Title	
PAPERWORK REDUCTION ACT NOTICE: The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to furnish it. We ask for the information to carry out the U.S. Customs Service laws. We need the information to ensure that importers/exporters are complying with these laws, to allow us to compute and collect the right amount of money, to enforce other agency requirements, and to collect accurate statistical information on imports. Your response is mandatory.	46. Address	47. Date

Customs Form 7501 (Proposal 03—16—82)

DECLARATION OF NOMINAL CONSIGNEE, CONSIGNEE, OR AGENT OF CONSIGNEE

To the best of my knowledge and belief, all statements appearing in this entry and in the invoice or invoices and other documents presented herewith and in accordance with which the entry is made, are true and correct in every respect; the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof; the invoices and other documents are in the same state as when received; I have not received and do not know of any other invoice, paper, letter, document or information showing a different currency price, value, quantity, or description of the said merchandise, and if at any time hereafter I discover any information showing a different state of facts I will immediately make the same known to the district director of customs at the port of entry.

If the merchandise is entered by means of a seller's or shipper's invoice, no customs invoice for any of the merchandise covered by the said seller's or shipper's invoice can be produced due to causes beyond my control. If the merchandise is entered by means of a statement of the value or the price paid in the form of an invoice, it is because neither seller's, shipper's, nor customs invoice can be produced at this time.

Were there any rebates, drawbacks, fees, commissions or royalties, either paid or allowed, which are not reflected on the invoice? ☐YES ☐NO

Did the production of the merchandise involve the furnishing, either free of charge or at a reduced cost, of goods or services to the seller or manufacturer? ☐YES ☐NO

RECORD OF CARTAGE OR LIGHTERAGE

Delivered to Cartman or Lighterman in apparent good condition except as noted below.

CONVEYANCE	QUANTITY	DATE	INSPECTOR	RECEIVED (Cartman or Lighterman)	RECEIVED (Date)	RECEIVED (Warehouse Prop.)
TOTAL:		Warehouse Officer				

REPORT OF EXCEPTIONS, OR OF WEIGHT, GAUGE, OR MEASURE; OR OTHER PERTINENT INFORMATION.

(All reports hereon must be dated and signed by the reporting officer.)

Date ..... Signature and Title .....

CARRIER'S CERTIFICATE AND RELEASE ORDER

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of section 484(h), Tariff Act of 1930. In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by the aforementioned statement to such consignee.

Date .....

(Name of carrier) .....

(Agent) .....

AUTHORITY TO MAKE ENTRY FOR PORTION OF CONSOLIDATED SHIPMENT

The merchandise covered by this entry or such portion thereof as may be specifically indicated was shipped by .....

..... consigned to ..... endorsed to .....

covered by * ..... dated ..... at .....

on file with the district director of customs at .....

I / We } ..... the consignee in the above mentioned document covering merchandise for various ultimate consignees, hereby authorize ..... or order to make customs entry for the merchandise.

.....
(Consignee)

(Transfer of the above authority may be made by endorsement here.)

*Insert "Bill of Lading," "Certified duplicate bill of lading," "Carrier's certificate," or "Shipping receipt."

NOTES:

For information relative to the preparation and filing of a customs entry see UNITED STATES CUSTOMS REGULATIONS and TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED.

The rates of duty used in this entry are not binding for future imports. Section 177.1, Customs Regulations, tells how to obtain binding rates.

FOR INFORMAL ENTRY, USE ONLY SHADED BLOCKS AND COLUMNS.

WHEN THIS FORM IS USED AS AN INFORMAL ENTRY—Liquidation of amount of duties and taxes, if any, due on this entry is effective on date of payment of this amount. For importer's right to protest or Government's right to redetermine this amount, see sections 514 and 520, T.A. 1930, and sections 174.12 and 173.2, Customs Regulations. Protest must be accompanied by this receipt or a photocopy thereof.

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

This space for OMB approval citation.

ENTRY SUMMARY

19 CFR 10.31, 10.91, 10.104, 141.61, 141.68, 142.11, 143.12, 143.24, 144.11

PERMIT

2. Broker/Importer Transaction No.		3. Entry Identification Entry No. Date of Entry
4. Entry Type and Entry Code		
5. Broker No.	6. Port Code	
7. Surety Code	8. Bond Code	
9. Importer of Record		10. Importer No.
11. Ultimate Consignee		12. Ultimate Consignee No.
13. Location of Goods G.O. No.	14. Containerized / 15. Reference No.	16. Summary Date
17. B/L or AWB No.	18. Foreign Port of Lading	19. I.T. No. and Date
20. Importing Vessel (Name & Flag) or Carrier	21. Trans. Mode	22. I.T. From (Port)
23. Date of Export / 24. Exporting Country	25. U.S. Port of Unlading	26. I.T. Carrier (Delivering)
27. Date of Import / 28. Mfr./Seller/Shipper Rel.	29. Warehouse	

30. Description of Merchandise		EXAMINATION ORDER AND OTHER ACTION TO BE TAKEN
30a. Country of Origin Gross Weight in Pounds	30b. Net Quantity in T.S.U.S.A. Units	

(Cut carbon on this line)

(Cut carbon on this line)

TO THE INSPECTOR: Articles shall be examined, sampled, weighed, gauged, measured, stamped, and/or disposed of as directed. Release shall be made only to or upon the order of the carrier. Reports shall be endorsed hereon.

Customs Officer

Examined or sampled as directed.	Weighed, gauged, measured, stamped as directed (check one box, if applicable).	Landed, released, or disposed of as directed, except as noted on the reverse. (If no exceptions show "None" in the following space.)
	☐ Entered / ☐ Invoiced — Quantities Accepted ☐ See Reverse ☐ See Attached Form 6001	
Date / Examiner or Sampler	Date / Weigher or Gauger	Date / Inspector

Customs Form 7501A (Proposal 03—16—82)

REPORT OF EXCEPTIONS, OR OF WEIGHT, GAUGE OR MEASURE; OR OTHER PERTINENT INFORMATION.

(All reports hereon must be dated and signed by the reporting officer)

(Date) (Signature and Title)

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

ENTRY SUMMARY CONTINUATION SHEET

OMB Approval Citation

3. Entry Identification

Entry No.

Date of Entry

30. Description of Merchandise		31.	32.	33.	34.	35. Duty and I.R. Tax	
30a. Country of Origin Gross Weight in Pounds	30b. Net Quantity in T.S.U.S.A. Units	(P) PEXT (C) CHGS (E) EPEX	Entered Value in U.S. Dollars	T.S.U.S.A. Reporting Number	Tariff or I.R.C. Rate	Dollars	Cents

Customs Form 7501B (Proposal 03—16—82)

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

ENTRY SUMMARY PERMIT CONTINUATION SHEET

OMB Approval Citation

3. Entry Identification

Entry No.

Date of Entry

30. Description of Merchandise		
30a. Country of Origin Gross Weight in Pounds	30b. Net Quantity in T.S.U.S.A. Units	EXAMINATION ORDER AND OTHER ACTION TO BE TAKEN

(Cut carbon on this line)

Customs Form 7501C (Proposal 03–16–82)

Instructions for Preparation
of the Revised Customs Form 7501

ENTRY SUMMARY - DUTIABLE AND FREE
(NOTE: MANDATORY = (M))

1 - CENSUS USE ONLY

This block is reserved for the Bureau of Census for statistical purposes.

2 - This block is reserved for broker's or importer's transaction/reference/ file number.

3 - ENTRY NO. AND DATE OF ENTRY (M)

Entry No. - 9 digit numeric code - always begins with last 2 digits of fiscal year, followed by 6 digit entry number and 1 digit check digit. Entry numbers and check digits are preassigned to importers or brokers by Customs or may be obtained individually from a customhouse entry unit. Acceptable formats follow:

80100001 8
80100001-8
80 100001 8
80 100001-8
80-100001 8
80-100001-8
80 100 001 8 (for WANDA)

Date of Entry - 6 digit numeric code; day, month, year.

4 - ENTRY TYPE AND ENTRY CODE (M)

The appropriate entry type followed by the 1 digit code for the type of entry summary being filed:

Entry Type	Entry Code
DUTIABLE CONSUMPTION	1
VESSEL REPAIR	2
APPRAISEMENT (see special instructions for this type entry)	3
WAREHOUSE, or	4
REWAREHOUSE	4
BONDED A/C FUEL	6
FREE CONSUMPTION	7
INFORMAL (No code should be shown; see special instructions for this type of entry)	-

For all merchandise constructively transferred into the Customs territory from a Foreign Trade Zone (or subzone) the initials FTZ should follow the entry name.

5 - BROKER NUMBER (M)

3 digit numeric code assigned to importers and brokers by customhouse entry unit.

6 - PORT CODE (M)

4 digit numeric code of the port where the entry summary is filed. Port codes are found in Annex A of the TSUSA. Examples:

2809
28 09
28-09

7 - SURETY CODE (M)

3 digit numeric code that identifies the surety company on the bond. The code is obtained from an ADP report entitled "Surety Master File," which is updated periodically. For U.S. Government importations and DCASR, the code 999 should appear in this block.

8 - BOND CODE (M)

1 digit numeric code as follows:

0 - For a U.S. Government, DCASR or appraisement entry
1 - Single Entry (any type); or SEB
2 - Consumption Term, CF 7553; or CTB
3 - Temporary Importation, CF 7563-A; or TIB
4 - Vessel Term, CF 7569; or VTB
5 - General Term, CF 7595; or GTB

9 - IMPORTER OF RECORD (NAME AND ADDRESS) (M)

Name and address, including zip code

10 - IMPORT NUMBER (M)

The IRS Number, Social Security Number of Customs assigned number of the Importer of Record. Three formats are acceptable:

12-3456789;
1234-56789; or
123-45-6789.

The importer of record is the individual or firm liable for the payment of all duties and meeting all statutory and regulatory requirements incurred as a result of the importation.

11 - ULTIMATE CONSIGNEE (M, if applicable)

The name and address, including zip code, of the individual or firm for whose account the merchandies is imported. (Not required if same as importer of record.)

12 - ULTIMATE CONSIGNEE NUMBER (M, if applicable)

The IRS, Social Security or Customs assigned number in the same format as for the Importer of Record Number.

13 - LOCATION OF GOODS (M, if entry summary serves as the entry)

The pier or site where goods are available for examination. In the case of general order merchandise, the number assigned by Customs.

14 - CONTAINERIZED - When merchandise is containerized, place "Yes" in the block. If not containerized, place "No" in the block.

15 - REFERENCE NUMBER

The IRS Number, Social Security Number of Customs assigned number of the individual or firm to whom refunds, bills or notices of extension, suspension or liquidation are to be sent.

16 - DATE OF SUMMARY

6 digit numeric code; day, month, year, that the entry summary is filed.

17 - B/L or AWB NUMBER (M)

Number assigned to the shipment by the carrier of the goods and by which it is listed on its manifest.

18 - FOREIGN PORT OF LADING (M)

For merchandise arriving in the United States by vessel, or air, report the name of the foreign port and country at which the merchandise was actually laden on the vessel or aircraft that carried the merchandise to the U.S.

For merchandise arriving in the U.S. by rail, truck, pipeline, mail, or other non-vessel/non-air mode of transportation from either Canada or Mexico, supply the name of the province (Canada) or state (Mexico) where the merchandise was first laden onto the carrier which takes it away from its original factory, mine, farm, etc. for exportation to the U.S.

For imported mail shipments, show the city and country listed under the name and address of the foreign shipper on Customs Form 3509, Notice to Addressee.

For merchandise transshipped abroad in the course of shipment to the U.S., whether or not covered by a through bill of lading, do not enter the foreign port of original lading or any port of lading other than the last foreign port of lading at which the merchandise was laden on the carrier which transported it to the first U.S. port of unlading.

When a single Customs form covers merchandise laden at more than one foreign port, the foreign port of lading shall be indicated separately in the "Description of Merchandise" column above each line item (or group of line items) for the merchandise loaded at each foreign port.

19 - I.T. NO. AND DATE (M, if applicable)

List In Transit Entry (CF 7512) Number and Date. Example: IT Entry No. 776824, August 20, 1978.

20 - IMPORTING VESSEL (Name and Flag) OR CARRIER (M)

For merchandise arriving in the U.S. by vessel, give the name of the vessel and the name (flag) of the country in which the vessel is registered, or the country code as provided in Annex B of the TSUSA, which transported the merchandise from the last foreign port of lading to the first U.S. port of unlading.

For merchandise arriving in the U.S. by air, give the name of the airline which carried the merchandise from the last foreign port of lading to the first U.S. port of unlading and NOT the domestic airline carrying the merchandise after the initial unlading in the U.S.

For merchandise arriving in the U.S. by means of transportation other than vessel or air, leave block 20 blank.

21 - TRANSPORTATION MODE (M)

Specify the method of transportation in terms of how the imported merchandise entered the first U.S. port from the last foreign country, i.e., whether by vessel, air, truck, railroad, pipeline, mail (surface and airmail), ferry or by "other" means.

22 - I.T. FROM (PORT)

List U.S. port from which merchandise is being shipped.

23 - DATE OF EXPORT (M)

For merchandise exported by vessel, note the month, day and year on which the carrier departed the last port of the country of exportation.

For merchandise exported by air, note the month and year in which the aircraft departed the last airport of the country of exportation.

For overland shipments from Canada and Mexico and shipments where the port of lading is located outside the country of exportation (e.g., the goods are exported from Switzerland but laden at Hamburg, West Germany), note the month and year in which the carrier crossed the border of the country of exportation (Switzerland).

For mail shipments, record the date of exportation noted on Customs Form 3509, Notice to Addressee.

24 - EXPORTING COUNTRY (M)

The exporting country (country of exportation) shall be the country of origin except when the merchandise while located in a third country is the subject of a new purchase, in which event the third country shall be regarded and reported as the country of exportation.

25 - U.S. PORT OF UNLADING (M)

For merchandise imported by vessel, or air, insert the U.S. port, as listed in Annex A of the TSUSA, at which the merchandise was unladen from the importing vessel or aircraft, whether or not such a port is a Customs port of entry. For example, if entry is filed at the Port of Los Angeles for merchandise unladen at Long Beach, California, show Long Beach as the port of unlading. The same principle applies when goods are unladen at a smaller port within a consolidated port of entry (e.g., Galveston and Houston).

When merchandise is transported in bond from the U.S. port of unlading to another U.S. port to be entered for consumption or warehouse, show as the port of unlading the port or point where the merchandise was unladen from the importing carrier before transportation in bond.

For merchandise arriving in the U.S. by means of transportation other than vessel or air, leave block 25 blank.

26 - I.T. CARRIER (DELIVERING)

List U.S. carrier on which shipment is laden for movement from the first port of entry (unlading).

27 - DATE OF IMPORT (M)

For merchandise arriving in the U.S. by vessel, report the month, day, and year on which the importing vessel transporting the merchandise from the foreign country arrived within the limits of the U.S. port where the merchandise was unladen.

For merchandise arriving in the U.S. other than by vessel, report the month and year in which the merchandise arrived within the limits of the U.S.

28 - MANUFACTURER/SELLER/SHIPPER/RELATIONSHIP

For relationship, indicate whether the seller and buyer are "related" or "not related." A related parties transaction is a transaction between persons who are related in any respect specified in section 402(g)(1) of the Tariff Act of 1930, as amended. The relationship should be abbreviated R or N, respectively.

If there are several sellers, both related and not related to the buyer, report the relationships in the PEXT, CHGS, and EPEX column above each line item (or group of line items) for the respective merchandise from each seller. Show "see below" in box 28.

For manufacturer/seller/shipper, this will be a future requirement. Information will be given in detail at a later time.

29 - WAREHOUSE

Name of bonded warehouse where goods will be delivered (Customs assigned number for bonded warehouse will be shown in this block, when available).

HEADING

30 - DESCRIPTION OF MERCHANDISE (M)

Provide a description of the merchandise in sufficient detail to permit the classification thereof under the proper TSUSA statistical reporting number. The description may be in Tariff Schedule terms or a detailed description of the merchandise as shown in the commercial invoice, or other documentation may be used. The description may be reported on either the same line or the line immediately above the line with the entered value.

30a - COUNTRY OF ORIGIN/GROSS WEIGHT IN POUNDS

Report the country of origin in terms of Annex B of the TSUSA (i.e., 4 digit code number without the decimal, name or abbreviated designation of the country or territory). The country of origin is defined as the country in which the product was mined, grown or manufactured. Further labor, work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."

When the merchandise is invoiced in or exported from a country other than that in which it originated, the actual country of origin shall be specified rather than the country of invoice or exportation.

When a single Customs Form covers merchandise from more than one country of origin, the country of origin shall be indicated separately against each line item (or group of line items).

Report the country of origin on each continuation sheet of the Customs Form.

Report the gross shipping weight in pounds for articles imported in vessels or aircraft (do not report gross weight for merchandise arriving in the U.S. by other modes of transportation). The gross weight may be reported on the same line with the entered value or the line immediately below. Supply separate gross weight information for each TSUSA item number. If the gross weight is not available for each number, approximate shipping weight for each item shall be estimated and reported. The total of these estimated weights should equal the actual gross shipping weight.

In the case of containerized cargo carried in lift vans, cargo vans, or similar substantial outer containers, the weight of such container should not be included in the shipping weight of the merchandise covered by each item number.

30b - NET QUANTITY IN TSUSA UNITS

When a unit of quantity is specified in the TSUSA for the item number, report the net quantity in the specified unit, and show the unit after the net quantity figure.

If two units of quantity are shown for the commodity in the TSUSA, report the net quantity in both units, with the unit indicated in each case. Insert the quantity in terms of the unit marked with a superior "v" on the line with the entered value or the line immediately below. Put the quantity in terms of any other unit below the first quantity and enclose it in parentheses.

Give quantities in whole units unless fractions of units are required for other Customs purposes.

If no unit of quantity is specified in the TSUSA for the item number, net quantity is not required to be reported and an "X" shall be entered in the "net quantity" column.

31 (P) PEXT; (C) CHGS; (E) EPEX (M)
(P) Port of exportation transaction value;
(C) aggregate cost of freight, insurance and all other charges;
(E) equivalent port of exportation value.

(P) In accordance with TSUSA general statistical headnote 1(a)(xiv) report the purchase price (i.e., the actual transaction value), in U.S. dollars, plus, when not included in such price, all charges, costs, and expenses incurred in placing the merchandise alongside the carrier at the port of exportation in the country of exportation (or in the case of merchandise not acquired by purchase, the equivalent of such price, charges, costs and expenses). This value must be shown for each TSUSA item number on the same line with the entered value. The legend "(P)" shall precede the value (e.g., (P) 5673).

Report the value in whole dollars rounded off to the nearest dollar. Dollar signs and commas shall be omitted (e.g., $5,750.64 should be reported as 5751).

If the value is estimated, place either "(estimate)", "(est)", or "(E)" after the amount of each value.

See part 4, Customs Import Statistics Handbook, for more detailed information.

(C) CHGS (TRANSPORTATION CHARGES)

In accordance with TSUSA general statistical headnote 1(a)(xvi) report the aggregate cost (not including U.S. import duty, if any) in U.S. dollars of freight, insurance and all other costs, charges, and expenses incurred

in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry.

This value shall be shown for each TSUSA item number immediately beneath the PEXT value and identified with a "(C)" before the value (e.g., (C) 550).

Report the value in whole dollars rounded off to the nearest dollar. Dollar signs and commas shall be omitted.

If the charge is estimated place either "(estimate)", "(est)", or "(E)" after the amount of each value. This legend is not required for Canadian rail or truck charges.

In the case of overland shipments (i.e., merchandise transported to the U.S. by means other than vessel or air) originating in Canada or Mexico, both the port of exportation and the first U.S. port of entry will be the border crossing; and the costs to the border shall be included in the PEXT value. Expenses incurred in transporting merchandise beyond the Canada-U.S. or Mexico-U.S. borders, by means other than vessel or air (i.e., overland by automobile, truck, train, pipeline, parcel post, or mail) are not required to be reported. Consequently, an "X" shall be shown for CHGS.

See part 4, Customs Import Statistics Handbook, for more detailed information.

(E) EQUIVALENT PORT OF EXPORTATION VALUE

In accordance with TSUSA general statistical headnote 1(a)(xv) if the merchandise was acquired in a transaction between related parties, report the equivalent of the arms-length value thereof, in U.S. dollars, plus, when not included in such value, all charges, costs, and expenses incurred in placing the merchandise alongside the carrier at the port of exportation in the country of exportation.

This value must be reported if "related" is reported in block 28.

This value shall be shown for each TSUSA item number immediately beneath the CHGS and identified with an "(E)" before the value (e.g., (E) 6545).

Report the value in whole dollars rounded off to the nearest dollar. Dollar signs and commas shall be omitted.

If the value is estimated place either "(estimate)", "(est)", or "(E)" after the amount of each value.

See part 4, Customs Import Statistics Handbook, for more detailed information.

32 - ENTERED VALUE (M)

Report the U.S. dollar value in accordance with the definition in Section 402 of the Tariff Act of 1930, as amended, for all merchandise, including merchandise free of duty or dutiable at specific rates.

This value shall be shown for each TSUSA item number on the same line with the item number.

Report the value in whole dollars rounded off to the nearest dollar. Dollar signs and commas shall be omitted.

33 - TSUSA ITEM NUMBER (M)

Report the appropriate 7 digit duty/statistical reporting number under which the article is classified in the Tariff Schedules of the U.S. Annotated (TSUSA).

If more than one TSUSA item number is required (e.g., for 806.3000 or 807.0000), follow the reporting instructions in the statistical headnotes in the appropriate TSUSA schedule or subpart.

34 - TARIFF OR I.R.C. RATE (M)

Show the rate(s) of duty for the classified item as designated by the TSUSA: Free, ad valorem or specific, or both.

35 - DUTY AND I.R. TAX, DOLLARS AND CENTS (M)

Estimated duty in dollars and cents, and/or I.R. Tax, calculated by applying the rate times dutiable quantity or value.

LOWER PORTION

36 - CUSTOMS USE ONLY

37 - MISSING DOCUMENTS

To be noted by the importer or broker when documents are not available at time of entry summary filing.

38 - DUTY (M)

Total estimated duty paid.

39 - TAX (M - if applicable)

Total estimated tax paid.

40 - I.S. TEAM/LIQ. CODE

FOR I.S. team provide the 2 digit numerical code assigned to the commodity team who is appraising and classifying merchandise. LIQ. code will be completed by Customs.

41 - OTHER (M)

42 - DECLARATION (M)

Self-explanatory.

43 - AUTHENTICATION (M)

Name and signature of declarant.

44 - TOTAL (M)

Total of all estimated duties and taxes paid.

45 - TITLE (M)

Job title of owner, agent, or consignee who signs declaration.

46 - ADDRESS (M)

Official address of individual or firm entering the merchandise.

47 - DATE (M)

Month, day, year when declaration is signed.

APPRAISEMENT ENTRY

When the CF 7501 is used as an appraisement entry, the Import Specialist should so note in the block entitled "Customs Use Only." The same declaration which now appears on the CF 7500, requesting appraisement under Sec. 498(a)(1), Tariff Act or 1930, should be stapled on top of the CF 7501 in the left margin, midway, as follows:

I hereby request appraisement under Sec. 498(a)(1), Tariff Act of 1930, for the reasons given above. I declare, to the best of my knowledge and belief, that this entry and the documents presented therewith set forth all the information in my possession, or in the possession of the owner of the merchandise described herein, as to the cost of such merchandise: that I am unable to obtain any further information as to the value of the said merchandise or to determine its value for the purpose of making formal entry thereof; that the information contained in this entry and in the accompanying documents is true and correct; and that the person(s) named above is the owner of the same merchandise.

Signature _____ Capacity _____

To The District Director: The merchandise described above has been examined and the contents and values are noted above.

Examiner _____ Date _____ Customs Officer _____ Date _____

INFORMAL ENTRY

Informal entries previously made on the unnumbered CF 5119-A unit set will be made on the revised CF 7501. The shaded blocks are to be completed for the informal entry, as described in Parts 143.21, 143.22, 143.23 and 143.24, Customs Regulations. Block 13, G.O. number, will be filled in only if merchandise has been placed in a general order warehouse. Marks and numbers appearing on the shipping packages will be shown in block 30a along with the country of origin. Obtain marks and numbers from packing list or invoice.

NOTE:

When a box is full or required information cannot be contained in the box, a supplemental sheet should be attached to the CF 7501, listing the complete information unless instructed otherwise. The statement, "see attached," should appear in the box on the CF 7501. An additional supplemental sheet should be attached to the statistical copy of the CF 7501.

[FR Doc. 26843 Filed 10-1-82; 8:45 am]
BILLING CODE 4820-02-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 115

[CGD 81-057]

General Bridge Permit Program Regulations

Corrections

In FR Doc 82-26239 appearing on page 41988 in the issue for Thursday, September 23, 1982, make the following changes:

1. On page 41991, first column, § 115.90(a)(5), insert the following after the fourth line: "Which avoids wetlands. Should there be no feasible and prudent alternative location".

2. On page 41991, third column, § 115.95(a)(3), last line, "producible" should read "reproducible".

3. On page 41992, § 115.100(a), fifth line from the top, "of" should read "or".

BILLING CODE 1505-01-M

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46 CFR Parts 33, 35, 75, 78, 94, 97, 160, 161, 167, 180, 185, 192, and 196

[CGD 80-024]

Lifesaving Equipment for Great Lakes Vessels Emergency Position Indicating Radiobeacons

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rules.

SUMMARY: This proposal would require that small passenger vessels on the Great Lakes, and lifeboats and liferafts on other inspected Great Lakes vessels as well as certain coastwise vessels operating on the Great Lakes, be equipped with Emergency Position Indicating Radio Beacons. The purpose of these beacons is to provide a radio signal that will alert potential rescuers to a casualty and will provide a beacon to assist in locating the casualty. The need for this action arises from several Great Lakes vessel casualties in which such a beacon would probably have prevented some of the loss of life.

DATES: Comments must be received on or before January 3, 1982.

ADDRESSES: Comments should be mailed to the Commandant (G-CMC/24) (CGD 80-024), U.S. Coast Guard, Washington, DC 20593. Between the hours of 7:00 A.M. and 5:00 P.M. Monday through Friday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G-CMC/24), Room 4402, U.S. Coast Guard Headquarters, 2100 Second St., S.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Merchant Marine Safety (G-MVI-3/24) Department of Transportation, U.S. Coast Guard Headquarters, Washington, DC 20593, (202) 426-1444.

SUPPLEMENTARY INFORMATION: On June 7, 1976, the Coast Guard published an Advance Notice of Proposed Rulemaking which listed a number of changes to lifesaving equipment regulations that were under consideration for Great Lakes vessels (41 FR 22810). Among these was a proposal to add a requirement for survival craft to have radio communication equipment that automatically sends a distress signal upon contact of the craft with the water. Of the 24 comments received on the Advance Notice, eight addressed this particular proposal and seven were comments generally supporting it. The eighth comment neither supported or opposed the proposal, but discussed automatic EPIRB activation.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include names and addresses, identify this notice (CGD 80-024) and the specific section of the proposal, and give reasons. The proposal may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one will be held if a written request raises a genuine issue.

Draft Evaluation

A Draft Evaluation has been prepared for these regulations in accordance with the Department of Transportation's Regulatory Policies and Procedures. That order (DOT 2100.5, 5/22/80, 44 FR 11034, 2/26/79 as amended by 44 FR 28126, 5/14/79) requires that the evaluation quantify, to the maximum extent practicable, the estimated cost of the regulations to the private sector, consumers, and federal, state and local governments, as well as the anticipated benefits and impact of the regulations. The Draft Evaluation also includes the Environmental Assessment required by the National Environmental Policy Act of 1969 (Pub. L. 91-190). This proposed rule making has also been evaluated under Executive Order 12291 ("Federal Regulation," 2/17/81, 46 FR 13193, 2/19/81), and has been determined not to be a "major rule" as defined in that order since the annual effect on the economy would be less than $100 million and no major increase in prices will result.

This proposal is expected to result in a total initial cost of about $13,500 for the approximately 90 small passenger vessels operating on the Great Lakes, and about $180,000 for the 150 other vessels, for a total of $193,500. The estimated recurring annual cost for small passenger vessels is $4,050 and $42,750 for other vessels for a total of $46,800. These costs will be imposed directly on the private sector (the operators of affected vessels). The operators are expected to pass the costs through to the ultimate consumers of affected maritime services in the form of price increases. However, because of the low overall cost of the proposal, increases in individual prices will be negligible. There is no effect on federal, state, and local governments except in their capacities as consumers of affected maritime services. Implementation and enforcement of these rules would be accomplished within the scope of current Coast Guard marine safety activities, so that there will not be any need for additional federal budget commitments. The primary benefit identified for the proposal is more timely and effective search and rescue efforts in the event of a casualty.

An initial regulatory flexibility analysis is required by the Regulatory Flexibility Act (Pub. L. 96-354) unless the proposed rule will not have a significant economic impact on a substantial number of small entities. It has been determined that an initial regulatory flexibility analysis is not required and that this proposed rule making would not have a significant impact on any affected entity. The small entities that would be affected by the proposed rule are primarily the owner-operators of tour boat and charter boat businesses (small passenger vessels) on the Great Lakes. The rules proposed in this notice would require only one Class C EPIRB aboard small passenger vessels. The Class C EPIRB is a type which is not approved by the Coast Guard and is intended primarily for use by small boats in coastal waters, including the Great Lakes. Its estimated cost is $150 with an average annual maintenance cost of $45. Other affected vessels would be required to carry an average of 3 Class D and Class E EPIRBs which are special Coast Guard approved adaptations of the Class C EPIRB. These are estimated to cost $400 a substantial number of small entities" at the time this notice of proposed rule making was prepared, an analysis of the

impact on the smaller vessel operations was prepared even though it may be eventually concluded that a regulatory flexibility analysis is not required.

The Draft Evaluation has been included in the public docket for this rule making, and may be examined at the Marine Safety Council (G-CMC/44) at the address listed in the **ADDRESSES** section.

Drafting Information

The principal persons involved in drafting these regulations are: Robert Markle, Office of Merchant Marine Safety, and Michael N. Mervin, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Two Coast Guard Marine Boards of Investigation into Great Lakes casualties recommended that Great Lakes vessels be equipped with emergency radiobeacons. The Board investigating the sinking of the SS Daniel J. Morrell in 1966 recommended a "data marker buoy" that would either be attached to a liferaft or float free from a sinking vessel. The buoy would transmit a distress signal on an emergency frequency. The Board investigating the sinking of the SS Edmund Fitzgerald recommended that each vessel sailing during the severe weather season have an Emergency Position Indicating Radiobeacon (EPIRB). In both cases, other vessels were near at the time of the sinking. Both sinkings occurred at night. In both cases, liferafts floated free of the sinking vessels. The search for the Morrell did not begin until 10 hours after the sinking when the Coast Guard was informed that the vessel was overdue. Of the 23 persons thought to have abandoned ship, only one survived. Confirmed deaths were attributed to exposure and drowning. If the rafts had been equipped with EPIRBs operating on the VHF-FM emergency and calling frequency, vessels and shore stations in the area would have been immediately alerted, and survivors might have been located soon afterward by homing on the distress signal. In the case of the Fitzgerald, there was radio contact with another vessel about 10 miles away on VHF-FM just minutes before the apparent sinking. It was not until four hours later that it was concluded that the Fitzgerald was missing and search efforts began. Again, a VHF-FM EPIRB would have provided an immediate alert and a homing beacon.

On October 11, 1979, the Federal Communications Commission published a final rule providing for the voluntary use of a VHF-FM EPIRB (designated Class C) for vessels operating in coastal waters (44 FR 58712). The equipment is intended primarily for recreational boats operating in coastal waters, including the Great Lakes. The device transmits the distinctive EPIRB tone for a 1.5 second period on Channel 16, the designated emergency and calling frequency. It then shifts to Channel 15 and transmits for a period of 15 seconds before shifting back to Channel 16. Silent periods of varying length are also included in the cycle. This allows a brief alerting function on the emergency and calling frequency without seriously disrupting communications. The longer period on Channel 15 is provided for the use of homing devices.

In the September 13, 1982 edition of the **Federal Register** (47 FR 40189), the Federal Communications Commission proposed the addition of Class D and Class E EPIRBs. Both of these EPIRBs are identical to the Class C in their radio transmission characteristics, but the Class D would be arranged for permanent installation in a lifeboat and the Class E would be arranged to be installed on a liferaft and would be automatically activated if the raft were inflated or floated free of the sinking vessel.

The regulations proposed in this notice would require Great Lakes tank vessels, passenger vessels, cargo and miscellaneous vessels and nautical school vessels to carry a Class D EPIRB on each lifeboat and a Class E EPIRB on each liferaft. The same requirements would also apply to vessels of these types certificated for coastwise service operating on the Great Lakes that are not required to carry a Class A EPIRB (see following paragraph). The only exception would be that vessels carrying more than 4 liferafts would have to have an EPIRB only on the first 4 rafts intended to be launched from the vessel. The purpose of this exception is to avoid any possible problems generated by a large number of simultaneously transmitting units, such as interference with communication on Channel 16 or improper functioning of homing devices. Small passenger vessels on the Great Lakes would be required to carry a Class C EPIRB at or near the principal steering station or else a Class E EPIRB on an inflatable liferaft. These regulations would result in each U.S. registered inspected vessel operating on the Great Lakes being equipped with an EPIRB system.

On March 18, 1974, the Coast Guard published final rules that required a Class A EPIRB on each self propelled vessel in ocean and coastwise service, except for coastwise vessels with a VHF radiotelephone on a route extending not more than 20 miles from a harbor of safe refuge (38 FR 10139). Class A EPIRBs float free of a sinking vessel and automatically send a distress signal on aircraft frequencies. Since these vessels are usually outside of the range of the VHF-FM distress system when underway, the VHF-FM EPIRB would not provide the necessary alerting function. The Class A EPIRB is a separate unit, not attached to any survival craft, so while it may provide the alert of a casualty, it may not be near the survivors when search and rescue forces arrive. The VHF-FM EPIRB on the lifeboats and liferafts could be an effective locating aid, not only for search and rescue aircraft, but for any nearby vessel as well. The VHF-FM EPIRB offers the added advantage of providing a signal when the ship is actually abandoned, which may be some time before the vessel sinks and the Class A EPIRB is activated. However, a requirement for VHF-FM EPIRBs on ocean-going vessels would have to be coordinated with other countries since an EPIRB required on U.S. vessels would also have to be compatible with foreign search and rescue systems. This coordination is now underway. Pending resolution of international implications, carriage on vessels other than Great Lakes vessels can not be considered.

In another Notice of Proposed Rule Making to be published soon under docket number CGD 77-202, the Coast Guard will propose that lifeboats on new and existing Great Lakes vessels be of the totally enclosed type. The effective date of such a rule would be a number of years after the effective date of the regulations proposed in this notice. As written, the rules proposed in this notice would require existing open lifeboats to be equipped with the Class D EPIRB even though the boats might be replaced within a few years. This should not cause any significant additional expense since the EPIRB would be readily removable from the open boat and installed in a new enclosed boat. Comments are specifically invited on this matter.

Inflatable liferafts are packed in rigid plastic containers large enough to contain the raft and its equipment without much extra volume. This prevents raft damage due to shifting inside the container. Addition of an EPIRB may make it necessary to use larger containers for some rafts to provide the needed extra room. Comments are invited on any complications or additional expense that might result.

The proposed rules make no distinction between rigid liferafts and inflatable liferafts. Most of the vessels that would be affected by these rules

that are required to have liferafts, have inflatable liferafts; however, a number of older vessels have rigid liferafts. The Class E EPIRB will be designed primarily for inflatable liferafts where the EPIRB will be inside the raft container, protect from the weather and arranged to be activated during the automatic inflation sequence. An EPIRB on a rigid raft will have to be arranged to activate when the raft is removed or floats free from the place where it is stowed. An EPIRB on a rigid raft will also be more directly exposed to the weather. Comments are invited on any complications that may arise from fitting EPIRBs on rigid rafts.

A number of changes to the regulations are also proposed to make sure that the EPIRBs are properly tested and maintained. For an EPIRB on an inflatable liferaft, inspection and maintenance will be done at its annual servicing. On other EPIRBs, this is done monthly on the vessel. It is also proposed to require that EPIRB-equipped inflatable liferafts have a special marking on the liferaft container stating that it contains an EPIRB and identifying the EPIRB by Coast Guard approval number and manufacturer.

This notice also proposes to revise Subpart 161.011 of Title 46 which is the basis for Coast Guard approval of EPIRBs. The revision includes provisions for the new Class D and Class E EPIRBs and reflects the procedure that has evolved for Coast Guard review of the application for type acceptance that is submitted to the Federal Communications Commission (FCC). Under this procedure, the Coast Guard reviews the design of any EPIRB that is designed to be mounted on an inspected vessel (Class A, D, or E) and provides its findings to the Commission to use in making a decision for the grant of type approval or type acceptance. The Coast Guard automatically approves the device upon receiving notice of type approval or type acceptance. This procedure simplifies the manufacturer's paperwork burden by simply using a copy of the FCC application for Coast Guard review.

The rules proposed in this notice for use of EPIRBs would be made effective 1½ years after publication as a final rule. This period of time should allow EPIRB manufacturers to make the necessary modifications to their equipment, apply for FCC type acceptance, coordinate with survival craft manufacturers on appropriate means of mounting, and produce equipment in sufficient numbers to allow vessel operators to comply with the rule. It is also a sufficient time to make sure that at least one full winter layup period is included between final rule publication and the effective date. The winter layup is the time when most modification work is carried out on Great Lakes vessels.

Requirements for EPIRBs on lifeboats and liferafts for vessels in ocean service are currently under consideration by the International Maritime Organization (IMO). When the IMO work is completed, the Coast Guard will give consideration to requirements for survival craft EPIRBs on these vessels. Rules for these vessels can not be considered at this time since radio equipment on these vessels must meet international requirements, and it can not yet be determined if the Class D and Class E EPIRBs will meet these requirements.

List of Subjects

46 CFR Parts 33 and 35

Marine safety, Tank vessels.

46 CFR Parts 75, 78, 180, and 185

Marine safety, Passenger vessels.

46 CFR Parts 94 and 97

Cargo vessels, Marine safety.

46 CFR Parts 160 and 161

Marine safety.

46 CFR Part 167

Marine safety, Nautical schools.

46 CFR Parts 192 and 196

Marine safety, Oceanographic vessels.

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 of the Code of Federal Regulations as follows.

PART 33—LIFESAVING EQUIPMENT

1. Amending S/33.60–1 by revising the introductory text of (b) and adding a new (c) as follows:

§ 33.60–1 Emergency position indicating radiobeacon (EPIRB)–T/ALL.

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel certificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have—

(1) in each lifeboat, an operative, approved Class D EPIRB, readily accessible for testing and for use by the operator of the boat;

(2) in each liferaft, if the vessel has four or less liferafts, an operative approved Class E EPIRB automatically activated when the raft is inflated or floats free; and

(3) in each of the first four liferafts intended to be launched from the vessel if the vessel has more than four liferafts, an operative approved Class E EPIRB as described in paragraph (c)(2) of this section.

(46 U.S.C. 391a; 49 CFR 1.46)

PART 35—OPERATIONS

2. By revising § 35.10–25 to read as follows:

§ 35.10–25 Emergency position indicating radiobeacon (EPIRB)–T/ALL.

The master shall ensure that each EPIRB, other than and EPIRB in an inflatable liferaft—

(a) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(b) has its battery replaced—

(1) immediately after each time the EPIRB is used, and

(2) before the marked expiration date.

(46 U.S.C. 391a; 49 CFR 1.46)

PART 75—LIFESAVING EQUIPMENT

3. Amending § 75.60–1 by revising the introductory text of (b) and adding a new (c) as follows:

§ 75.60–1 Emergency position indicating radiobeacon (EPIRB).

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel certificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have—

(1) in each lifeboat, an operative, approved Class D EPIRB, readily accessible for testing and for use by the operator of the boat;

(2) in each liferaft, if the vessel has four or less liferafts, an operative approved Class E EPIRB automatically activated when the raft is inflated or floats free; and

(3) in each of the first four liferafts intended to be launched from the vessel if the vessel has more than four liferafts, an operative approved Class E EPIRB as described in paragraph (c)(2) of this section.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 78—OPERATIONS

4. By revising § 78.17–85 to read as follows:

§ 78.17–85 Emergency position indicating radiobeacon (EPIRB).

The master shall ensure that each EPIRB, other than an EPIRB in an inflatable liferaft—

(a) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(b) has its battery replaced—

(1) immediately after each time the EPIRB is used, and

(2) before the marked expiration date.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 94—LIFESAVING EQUIPMENT

5. Amending § 94.60–1 by revising the introductory text of (b) and adding a new (c) as follows:

§ 94.60–1 Emergency position indicating radiobeacon (EPIRB).

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel certificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have—

(1) in each lifeboat, an operative, approved Class D EPIRB, readily accessible for testing and for use by the operator of the boat;

(2) in each liferaft, if the vessel has four or less liferafts, an operative approved Class E EPIRB automatically activated when the raft is inflated or floats free; and

(3) in each of the first four liferafts intended to be launched from the vessel if the vessel has more than four liferafts, an operative approved Class E EPIRB as described in paragraph (c)(2) of this section.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 97—OPERATIONS

6. By revising § 97.17–65 to read as follows:

§ 97.17–65 Emergency position indicating radiobeacon (EPIRB).

The master shall ensure that each EPIRB, other than an EPIRB in an inflatable liferaft—

(a) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(b) has its battery replaced—

(1) immediately after each time the EPIRB is used, and

(2) before the marked expiration date.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 160—LIFESAVING EQUIPMENT

Subpart 160.051—Inflatable Liferafts

7. Amending § 160.051–6 by adding a new paragraph (e)(3) to read as follows:

§ 160.051–6 Servicing.

* * * * *

(e)* * *

(3) *Servicing of EPIRBs.* Each time an inflatable liferaft equipped with an emergency position indicating radiobeacon (EPIRB) is serviced, the EPIRB must—

(i) be tested using the integrated test circuit and output indicator, to determine that it is operative; and

(ii) have its battery replaced if the EPIRB has been used or if the marked date has expired.

* * * * *

8. Amending § 160.051–8 by adding a new paragraph (c) to read as follows:

§ 160.051–8 Nameplate and marking.

* * * * *

(c) *Special marking for inflatable liferaft containing an EPIRB.* If the inflatable liferaft is equipped with an EPIRB, the container marking required in this section must include a notice that includes the following information about the EPIRB:

(i) The liferaft contains an automatically activated Class (insert appropriate Class designation) EPIRB (Emergency Position Indicating Radiobeacon).

(ii) U.S. Coast Guard approval number (insert number).

(iii) Manufactured by (insert name and address of manufacturer).

Subpart 161.011—Emergency Position Indicating Radiobeacons

9. Amending § 161.011–5 by adding new paragraphs (b) and (c) to read as follows:

§ 161.011–5 Classes.

* * * * *

(b) Class D—an EPIRB that has been type approved or type accepted by the FCC as a Class D EPIRB. These EPIRBs are designed to be mounted in a lifeboat and activated manually in an emergency.

(c) Class E—an EPIRB that has been type approved or type accepted by the FCC as a Class E EPIRB. These EPIRBs are designed to be attached to a liferaft and activated automatically when the liferaft floats free or inflates.

10. By revising § 161.011–10 to read as follows:

§ 161.011–10 EPIRB approval.

(a) The Coast Guard approves the classes of EPIRBs listed in § 161.011–5 of this subpart.

(b) An application for type approval or type acceptance of an EPIRB should be submitted to the FCC in accordance with Title 47 of the Code of Federal Regulations, Part 2. A copy of the application for a Class of EPIRB listed in § 161.011–5 of this subpart must also be submitted to the Commandant (G–MVI–3/24), U.S. Coast Guard Headquarters, Washington, D.C. 20593. The Coast Guard reviews the test results in the application that concern installation and automatic operation (if required) of the EPIRB. The Coast Guard provides the results of the review to the manufacturer, and to the FCC for its use in acting upon the application.

(c) Upon notification of the FCC type acceptance or type approval, the Chief, Survival Systems Branch (G–MVI–3/24) issues a certificate of approval for the EPIRB.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

11. Amending § 167.35–72 by revising the introductory text of (b) and adding a new (c) as follows:

§ 167.35–72 Emergency position indicating radiobeacon (EPIRB).

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel certificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have—

(1) in each lifeboat, an operative, approved Class D EPIRB, readily accessible for testing and for use by the operator of the boat;

(2) in each liferaft, if the vessel has four or less liferafts, an operative approved Class E EPIRB automatically activated when the raft is inflated or floats free; and

(3) in each of the first four liferafts intended to be launched from the vessel if the vessel has more than four liferafts, an operative approved Class E EPIRB as described in paragraph (c)(2) of this section.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

12. Amending § 167.65–1 by revising paragraph (c)(3) to read as follows:

§ 167.65–1 Station bills, drills, and log book entries.

* * * * *

(c) * * *

(3) The master shall ensure that each EPIRB, other than an EPIRB in an inflatable liferaft—

(i) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(ii) has its battery replaced—

(A) immediately after each time the EPIRB is used, and

(B) before the marked expiration date.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 180—LIFESAVING EQUIPMENT

13. Amending § 180.40–1 by revising the introductory text of (b) and adding a new (c) as follows:

§ 180.40–1 Emergency position indicating radiobeacon (EPIRB).

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel cetificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have either—

(1) an operative Class C EPIRB stowed at or near the principal steering station; or

(2) if the vessel has an inflatable liferaft, an operative approved Class E EPIRB, in the raft, automatically activated when the raft is inflated.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 185—OPERATIONS

14. By revising § 185.25–20 to read as follows:

§ 185.25–20 Tests of Emergency position indicating radiobeacon (EPIRB).

The licensed operator of the vessel shall ensure that each EPIRB, other than an EPIRB in an inflatable liferaft—

(a) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(b) has its battery replaced after the EPIRB is used and before the marked expiration d te.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 192—LIFESAVING EQUIPMENT

15. Amending § 192.65–1 by revising the introductory test of (b) and adding a new (c) as follows:

§ 192.65–1 Emergency position indicating radiobeacon (EPIRB).

* * * * *

(b) Compliance with paragraph (a) of this section is not required for a coastwise vessel—

* * * * *

(c) Each vessel certificated for Great Lakes service, and each other vessel operating on the Great Lakes that does not have a Class A EPIRB meeting paragraph (a) of this section, must have—

(1) in each lifeboat, an operative, approved Class D EPIRB, readily accessible for testing and for use by the operator of the boat;

(2) in each liferaft, if the vessel has four or less liferafts, an operative approved Class E EPIRB automatically activated when the raft is inflated or floats free; and

(3) in each of the first four liferafts intended to be launched from the vessel if the vessel has more than four liferafts, an operative approved Class E EPIRB as described in paragraph (c)(2) of this section.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

PART 196—OPERATIONS

16. By revising § 196.15–65 to read as follows:

§ 196.15–65 Emergency position indicating radiobeacon (EPIRB).

The master shall ensure that each EPIRB, other than an EPIRB in an inflatable liferaft—

(a) is tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and

(b) has its battery replaced—

(1) immediately after each time the EPIRB is used, and

(2) before the marked expiration date.

(46 U.S.C. 481, 49 U.S.C. 1655(b)(1); 49 CFR 1.46)

Dated: May 14, 1981.

Clyde T. Lusk, Jr.,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 82–27028 Filed 10–1–82; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82–664; RM 4181]

FM Broadcast Station in Bisbee, Arizona, Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The action proposes the assignment of FM Channel 217A to Bisbee, Arizona, as its first noncommercial FM assignment, in response to a petition filed by Lee M. Spinks.

DATES: Comments must be filed on or before November 12, 1982, reply comments on or before November 29, 1982.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: September 16, 1982.

Released: September 27, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.504(a) Table of Assignments, Noncommercial Educational FM Broadcast Stations (Bisbee, Arizona), RM–4181.

1. The Commission herein considers a petition for rule making filed July 17, 1982, by Lee M. Spinks ("petitioner"), which seeks the assignment of Channel 217A to Bisbee, Arizona [1], as its first noncommercial educational FM assignment. Petitioner failed to state that he would apply for the channel, if assigned. He is requested to do so in comments to this proposal.

2. We have determined that Channel 217A can be assigned to Bisbee, Arizona, in conformity with the minimum distance separation requirements, provided the transmitter

[1] The petition requested Channel 1211A for assignment to Bisbee. That channel, operating with 100 watts at 100 feet would conflict with the proposals in Docket 20735 as it relates to Television Station KUAT (Channel 6) at Tuscon, Arizona. Therefore, we have substituted channel 217A for consideration herein, which meets the criteria in Docket 20735.

site is located approximately 4 miles east of the city.[2]

3. Since Bisbee, Arizona, is located within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposed assignment requires concurrence of the Mexican government.

4. In view of the fact that the proposed assignment could provide a first noncommercial educational FM service to Bisbee, the Commission believes it appropriate to propose amending the Noncommercial Educational FM Table of Assignments (§ 73.504(a) of the Commission's Rules) with regard to the following city:

City	Channel No.	
	Present	Proposed
Bisbee, Arizona		217A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before November 12, 1982, and reply comments on or before November 29, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See: *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[2]This restriction is necessary to avoid short spacing to unused Channel 217A at Nogales, Arizona.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appedix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

(4) *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-27210 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-663; RM-4176]

TV Broadcast Station in High Springs, Florida, Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposes to assign UHF commercial television Channel 53 to High Springs, Florida, as requested by American Satellite and Television, Inc. The channel could provide a first local television service to High Springs.

DATES: Comments must be filed on or before November 8, 1982, and reply comments on or before November 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

Adopted: September 16, 1982.

Released: September 23, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (High Springs, Florida), BC Docket No. 82-663 RM-4176.

1. The Commission has under consideration a petition for rule making to assign commercial UHF television Channel 53 to High Springs, Florida. The petition was filed on July 30, 1982, by American Satellite and Television, Inc. ("ASAT").

2. ASAT submitted an engineering statement to show that the proposal would be fully consistent with the Commission's spacing requirements for television stations.

3. High Springs is described as a community of 2,491 [1] in Alachua County (population 151,348), about halfway between Gainesville and Lake City, Florida, "the two major communities in north central Florida." It is located within the Gainesville Standard Metropolitan Statistical Area (SMSA), which, ASAT states, is one of the fastest growing in the nation. The population is said to have increased by 41.4 percent from 1960 to 1970 and by 44.5 percent from 1970 to 1980.

4. ASAT states that the proposal would serve north central Florida, providing primary service to High Springs, Lake City, and the nine-county area from the Florida-Georgia boundary on the north to Ocala on the south.

5. ASAT states that the region is presently served by only one commercial television facility, Station WCBJ, Channel 20, Gainesville, which recently moved its transmitter to a point between Gainesville and Ocala, thus reducing its service to some areas north of Gainesville.

6. ASAT affirms that it will promptly apply for operation on the channel if it is assigned as requested.

7. In view of the fact that the proposed television channel assignment would provide for a first local television service, the Commission believes it appropriate to propose amending the Television Table of Assignments, Section 73.606(b) of the Commission's Rules with regard to High Springs, Florida, as follows:

City	Channel No.	
	Present	Proposed
High Springs, Fla		53+

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *Note:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before November 8, 1982, and reply comments on or before November 23, 1982, and are advised to read the Appendix for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Assignments, § 73.606(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 Fed. Reg. 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Philip S. Cross, Broadcast Bureau, (202) 632-5414. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions

[1] Population figures are from the 1980 U.S. Census Advance Report.

by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-27209 Filed 10-1-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-665; RM-4175]

FM Broadcast Station in Payette and Weiser, Idaho, Proposed Changes in Table of Assignments.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 262 for Channel 261A at Payette, Idaho, and modification of the license for Station KWBJ(FM) accordingly, in response to a petition filed by the licensee, Blue Mountain Broadcasting Company. Additionally, the substitution of Channel 257A for unused Channel 265A at Weiser, Idaho, will be necessary.

DATE: Comments must be filed on or before November 8, 1982, and reply comments on or before November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: September 17, 1982.

Released: September 24, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of §73.202(b), Table of Assignments, FM Broadcast Stations. (Payette and Weiser, Idaho), BC Docket No. 82-665 RM-4175.

1. Blue Mountain Broadcasting Company ("petitioner")[1] filed a petition on July 30, 1982, seeking to substitute Class C Channel 262 for Channel 261A at Payette and to modify the license for Station KWBJ(FM) to specify operation on Channel 262. Petitioner also proposed the substitution of Channel 257A for Channel 265A at Weiser, Idaho. This substitution is necessary to meet the minimum separation requirements for the Payette proposal. It will not affect any existing operation, since Channel 265A is not in use.

2. In support of the proposed channel substitution at Payette, petitioner claims that a Class C operation will provide improved signal quality to outlying areas, and provide city grade signal to small towns, instead of the secondary coverage now received. Petitioner also notes that its proposal will eliminate the competitive disparity resulting to its station and the two Class C stations in the Payette/Ontario (Oregon) market.[2] To further support his proposal, petitioner submitted demographic and economic information, and stated that the proposed substitution of channels would cause limited preclusion. However, in view of the action taken in the *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), this information is no longer relevant.

3. We believe that the petitioner's proposals warrant consideration. The channels can be substituted in compliance with the Commission's minimum distance separation requirements. In accordance with our established policy, we shall also propose to modify the license of Station KWBJ (Channel 261A) to specify operation on Channel 262. However, should another party indicate an interest in the Class C assignment, then the modification could not be implemented. See, *Cheyenne Wyoming*, 62 F.C.C. 2d 63 (1976). Instead, if the channel is assigned, an opportunity for the filing of a competing application must be provided.

4. In view of the above, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, as it pertains to Payette and Weiser, Idaho, as follows:

City	Channel No.	
	Present	Proposed
Payette, Idaho	261A	262
Weiser, Idaho	265A	257A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before November 8, 1982, and reply comments on or before November 23, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed. Reg. 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

[1] Blue Mountain Broadcasting Company is the licensee of Station KWBJ(FM), Payette, Idaho.

[2] Petitioner notes that it was granted a waiver to operate its Stations KYET(AM) and KWBJ(FM) outside the corporate city limits of Payette (its city of license). The stations are said to be located in Ontario with transmitters at the edge of Payette's boundary.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regualtions, interested parties may file comments and reply comments on or before the dates set for in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-27211 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket NO. 82-666; RM 4176]

FM Broadcast Station in Marlow, Oklahoma, Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This action proposes the assignment of FM Channel 221A to Marlow, Oklahoma, in response to a petition filed by Gary Wafford. The proposal could provide a first FM service to that community.

DATES: Comments must be filed on or before November 8, 1982, and reply comments must be filed on or before November 23, 1982.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: September 17, 1982.

Released: September 24, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Marlow, Oklahoma), BC Docket No. 82-666 RM-4174.

1. A petition for rule making was filed July 26, 1982, by Gary Wafford ("petitioner") proposing the assignment of Channel 221A to Marlow, Oklahoma, as its first FM assignment. Petitioner stated that he will apply for the channel, if assigned.

2. A site restriction of approximately 6.7 Miles northwest of Marlow is required due to Station KELS in Ardmore, Oklahoma.

3. Petitioner also submitted community data in support of his proposal. However, in view of the action taken in BC Docket No. 80-130, *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), this information is no longer needed.

4. In view of the fact that the proposed channel assignment could provide a first FM broadcast service to Marlow, Oklahoma, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, with respect to the following community.

Channel No.	City	
	Present	Proposed
Marlow, Okla		221A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before November 8, 1982, and reply comments on or before November 23, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of

Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commisson's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-27212 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-72; Notice 1]

Transportation of Hazardous Liquids by Pipeline Retention of Radiographic Film

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to delete the requirement in § 195.234(g) to retain radiographic film for 3 years after a pipeline is placed in service and to map the location of the radiographed welds. The existing rule does not appear to enhance safety, but does impose a significant cost burden.

DATE: Interested persons are invited to submit written comments on this proposal. All comments must be filed by November 18, 1982. Late filed comments will be considered so far as practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESS: Communications should be sent to the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, and identify the docket and notice numbers.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, 202-426-2392.

SUPPLEMENTARY INFORMATION:

Background

Under the requirements of § 195.234, at least 10 percent of the girth welds made daily on a pipeline must be nondestructively tested to determine the acceptability of the welds. In addition, 100 percent of the girth welds that are located in specified areas (where a defect might occur or a spill could have serious consequences) must be nondestructively tested. To assure compliance with these testing requirements, § 195.234(g) requires that a record by kept for 3 years of welds that have been nondestructively tested, showing, if practicable, the location of the weld, and including the developed film for welds tested by radiography. Besides serving as a check on compliance, MTB believes that the drafters of § 195.234(g) thought that retained radiographs would be advantageous in analyzing any leak that might develop in a radiographed weld.

In addition to the § 195.234(g) requirements, § 195.266(a) requires that a complete record be kept for the life of the facility showing the total number of girth welds and the number nondestructively tested, including the number rejected and the disposition of each rejected weld.

Two persons have petitioned MTB to delete the radiograph retention requirement from § 195.234(g). In a letter dated September 21, 1977 (Pet. 77-11), Consolidated X-Ray Service

Corporation requested that § 195.234(g) be made identical to the comparable recordkeeping requirement for gas pipelines set forth in § 192.243(f), which does not require retention of radiographs, or the exact location of each weld. Consolidated argued that the requirement for gas pipelines should be sufficient for liquid pipelines, since the construction methods (i.e., materials used, welding practices, and inspection techniques) are the same for the two types of pipelines. Consolidated also pointed out that although radiograph retention was initially proposed for inclusion in § 192.243(f) (35 FR 1112), it was deleted in the final rule (35 FR 13248) in favor of the current, more general requirement on grounds that "retention of X-ray film would present a substantial clerical burden, and will not prove too valuable in accident investigation."

Colonial Pipeline Company, by letter dated October 17, 1978, also requested that the requirement to retain weld radiographs be deleted from § 195.234(g). Colonial argued that the objective of radiographic inspection of girth welds is to control the quality of welding, and that this objective is met by immediately bringing any problems that are detected to the attention of the welders. Thus, Colonial concludes, a weld radiograph loses its usefulness after a weld is initially accepted or rejected. In further argument against the need to retain radiographs beyond their initial interpretation, Colonial argued that a record of film interpretation and subsequent disposition of the weld, combined with a metallurgical examination, would be sufficient to explain any weld failure that might occur. Colonial also said the burdens associated with radiograph retention (the clerical tasks of rolling, marking, transporting, and storing film as much as 132 inches in length) are costly, and the time spent by inspectors who perform these tasks reduces their effectiveness in visually inspecting and interpreting film of additional welds.

Objective

Part 192 for gas pipelines and Part 195 for hazardous liquid pipelines both have recordkeeping requirements pertaining to nondestructive testing of girth welds. The requirements are not the same, however, and MTB believes the requirements of Part 192 are adequate for the purposes of providing evidence for enforcement and information to supplement a metallurgical analysis of any future leaks occurring in girth welds that have been nondestructively tested.

The added burdens of keeping radiographic film as well as mapping the location of each weld currently imposed by § 195.234(g) do not appear necessary to achieve the recordkeeping purposes, since for similarly constructed gas pipelines, mere statements attesting to compliance have proved sufficient for enforcement needs, and as one of MTB's predecessor agencies, the Office of Pipeline Safety, concluded in 1970, old radiographs are not particularly helpful in accident analysis. Therefore, MTB is proposing to revoke § 195.234(g) but retain § 195.266(a) for the girth weld recordkeeping requirement, making the requirements of Part 195 similar to Part 192. Under this proposal, in contrast to the present rule, retention of radiographic film would not be required; records would have to be kept for the life of the pipeline, but the records need not show the precise location of each weld tested.

Issue

A further benefit that derives from § 195.234(g) is that retained radiographs enable enforcement personnel to verify the judgments about weld quality made by persons who originally interpreted the film. Welding irregularities involving both misread and falsified radiographs were discovered in this manner on the Trans-Alaska crude oil pipeline, and have been discovered by pipeline operators' own quality control personnel on other pipelines. Some persons might argue, therefore, that radiographs should be retained for this reason. MTB does not agree, however, because deliberate misrepresentation can occur with respect to any type of record, and because the quality of finished girth welds is further assured by Part 195 through requirements other than nondestructive testing. For example, Subpart D requires that welds be visually inspected and that welders and welding procedures be qualified by testing. Also, under Subpart E, each pipeline must be hydrostatically tested. MTB believes that these controls, including the requirement to nondestructively test certain welds, are sufficient to assure weld quality, making the added requirement of retaining radiographs until there is opportunity for examination by MTB enforcement personnel superfluous. Such examination may occur, nevertheless, during the normal course of MTB's compliance investigations of pipeline construction activity.

If § 195.234(g) is deleted as proposed, the question of whether radiographs must be retained beyond the stage of initial interpretation until they are reviewed by an operator's quality control personnel would depend on the procedures the operator establishes under § 195.234(c) for interpretation of radiographs. If those procedures provide for quality control review, then the radiographs would have to be kept until that review is completed and a final decision is made as to weld acceptability. However, since Part 195 does not require a second level review of radiographs, if an operator does not include one in its interpretation procedures under § 195.234(c), then radiographs could be disposed of after the initial interpretation and decision as to weld acceptability.

MTB believes that significant cost savings will result from this proposed rule. Determining the exact location of each weld and identifying, transporting, and storing film is relatively expensive, especially on large pipelines. The MTB estimates that approximately $2.5 million is spent annually by the liquid pipeline industry mapping radiographed welds, and an additional $0.8 million is spent annually on retaining radiographs. The MTB believes these costs can be substantially eliminated without reducing public safety. A Regulatory Evaluation is available in the docket.

Since this proposed rulemaking action will have a positive effect on the economy of less than $100 million a year, will result in a cost savings to consumers, industry, and government agencies, and no adverse effects are anticipated, the action is not "major" under Executive Order 12291 or "significant" under Department of Transportation procedures.

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

List of Subjects in 49 CFR Part 195

Ammonia, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In view of the above, MTB proposes to amend Part 195 of Title 49 of the Code of Federal Regulations by revoking § 195.234(g).

(49 U.S.C. 2002; 49 CFR 1.53, Appendix A to Part 1, and Appendix A to Part 106)

Issued in Washington, D.C., on September 28, 1982.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 82-27229 Filed 10-1-82; 8:45 am]
BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1121

[Ex Parte No. 274 (Sub-5)[1]]

Revision of Abandonment Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission's regulations set forth at 49 CFR 1121 (1981) govern applications to abandon or to discontinue service over rail lines and offers of financial assistance to continue service over those lines. We propose to modify portions of Subpart D of our regulations which set forth the standards for determining costs, revenues, and return on value in abandonment and offer of financial assistance proceedings. These revisions would reflect policy changes and court decisions made since adoption of the present regulations. Minor changes in carriers' filing requirement are also proposed.

DATES: Comments must be received within 30 days of this publication.

ADDRESS: Send comments (original and 10 copies) to: Interstate Commerce Commission, Room 5417, Washington, D.C. 20423

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245, or Wayne A. Michel, (202) 275–7657.

SUPPLEMENTARY INFORMATION:

Overview

The Commission's regulations set forth at 49 CFR Part 1121 (1981) govern applications to abandon or to discontinue service over rail lines and offers of financial assistance to continue service over those lines. We propose to modify portions of Subpart D of our regulations which set forth the standards for determining costs, revenues, and return on value in abandonment and offer of financial assistance proceedings. Most of the proposed modifications are necessary to conform to the mandate of *Chicago & North Western Transp. Co* v. *United States*, 582 F. 2d 1043 (7th Cir.) *cert. denied*, 439 U.S. 1039 (1978) (*CNW Case*). Other changes reflect recent decisions in which we have found that labor costs and property taxes are costs attributable to a line, and opportunity costs must be considered in weighing the merits of an abandonment.

Finally, we propose other minor revisions to our regulations governing: (1) The filing of system diagram maps; (2) the filing of certain environmental data; (3) the time for filing data supporting offer of financial assistance estimates; and (4) the waiver of our abandonment regulations.

In proposing these changes, we have considered the rail transportation policy set forth in 49 U.S.C. 10101a.

I. The CNW Case

In the *CNW Case*, the Seventh Circuit partially invalidated our abandonment regulations.[2] The court held that the statute requires that for subsidy purposes: (1) The "current cost" of cars, locomotives, and equipment with respect to depreciation expense must be based on replacement value; (2) the cost of equity capital must be reflected in calculating the return on equipment; and (3) the effects of Federal and State income taxes on equity capital must be considered. Even though the court's holding was limited to our subsidy standards, we propose to adopt the court's reasoning on these issues for both abandonment and subsidy calculations. Concerning the court's holdings that we must consider the cost of equity capital for a railroad in reorganization, however, we will limit our consideration to subsidy calculations.

In addition, we will address the effect of rehabilitation of a line paid for by a subsidizer on the return on investment due the carrier.

A. Cost of Equipment

The *CNW Case* raised important policy considerations regarding equipment costing methodology. In selecting an appropriate costing methodology for both abandonment proceedings and subsidy offers, we seek to establish standards which will permit accurate evaluation of the financial burden of continued operations over a line segment.

We propose to revise § 1121.42(g) and (h) and add § 1121.42(o) to reflect our view that equipment costs should now be computed by first determining the current cost of new equipment and then adjusting for accumulated depreciation. See, *Chicago & North Western Transp. Co.—Abandonment*, 366 I.C.C. 373, 375 (1982). This approach should reflect actual costs to the railroad because depreciation expense would be calculated by taking into account the current replacement cost of equipment. Further, return on investment would more accurately reflect the current value of the equipment used on the line proposed to be abandoned.

The depreciated book value (the method prescribed in our present regulations) tends to understate costs because it does not allow for the persistent and substantial inflation experienced over the last several years. On the other hand, use of replacement cost of new equipment, without allowances for accumulated depreciation, would overstate required return on investment for past operations by overvaluing the equipment involved. A third possible methodology, based on replacement cost of equipment in its used condition, would provide accurate costs but only if replacement costs could be determined in a reliable manner.

B. Cost of Capital

We propose significant changes in the cost of capital calculations. Three of the changes affect calculations in both the abandonment and subsidy area: (1) The cost-of-capital will be calculated on a before-tax basis; (2) the calculations related to new equipment purchase will include the use of the statutory tax rate in determining the cost of capital and in developing the investment tax credit for the line segment; and (3) the railroads will be allowed to use the industry wide average debt/equity composition for their capital structure instead of attempting to determine their actual structure. There are also two changes which only affect subsidy calculations: (1) For railroads not in reorganization ("non-bankrupt railroad"), the rate of return applied to the value of the rail properties will be computed on the basis of the railroad's *effective* tax rate; and (2) for railroads in reorganization ("bankrupt railroads"), the reasonable return on rail properties will be calculated using the Commission's latest annual findings in its "Adequacy of Railroad Revenue" determinations under the procedures promulgated in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981).

We shall discuss each of these proposed revisions individually.

1. *Before-Tax Basis for Cost-of-Capital.* Any return on investment, whether an operating profit or a subsidy payment, is taxable to the railroad, so it is a pre-tax earning and should be

[1] This proceeding embraces Ex Parte No. 274 (Sub-No. 2), *Abandonment of Railroad Lines and Discontinuance of Service* (not printed), served April 11, 1979, 44 Fed. Reg. 37243 (June 26, 1979). Because that proceeding has not advanced beyond the initial comment stage, it will be embraced in this proceeding for further comment and action.

[2] The Court's decision also invalidated section 1121.38(i)–(2)(ii–iv), which provided for the Commission to postpone an abandonment certificate beyond the statutory 6-month maximum negotiation period if the parties fail to execute a financial assistance agreement. This holding has been legislatively reversed by provisions enacted by the Staggers Rail Act of 1980, Pub. L. No. 96–448.

judged by a pre-tax standard. Accordingly, the adjustment for income taxes proposed earlier in Ex Parte No. 274 (Sub-No. 2) has been changed from an after-tax basis to a before-tax basis. The rate-of-return on equity should be adjusted by increasing it to cover an allowance for either the statutory or effective tax rate, depending on the item to which it is applied. The cost of debt should not be adjusted.

2. *Use of Statutory Tax Rate.* The statutory tax rate will be applied to the cost of equity capital in determining the rate-of-return for equipment in those instances where the regulations assume investment in new equipment. Use of this tax rate affects: (1) The return on investment for locomotives included in the on-segment cost, section 1121.42(h); (2) the return on investment in freight cars that is included in the on-segment cost per car-day calculation, section 1121.42(g)(3); (3) the returns on value for freight cars and locomotives that are included in the application of Rail Form A for developing the off-segment costs, § 1121.42(n)(2).

Because these items are assumed to be associated with new investment by the railroads, use of the statutory tax rate is appropriate. This is in accordance with our policy in proceedings related to coal traffic where additional investments are necessary and are attributable to a single segment of traffic. *See, Coal Rate Gudelines—Nationwide,* 364 I.C.C. 360, 371 (1980).

3. *Use of Industry Wide Capital Structure Compositon.* The revised regulations propose two bases for determining a railroad's capital structure weighted for debt and equity. The preferable method is the actual debt/equity ratio in the capital structure of the railroad filing for abandonment. However, as we acknowledged in Ex Parte 402, *Reasonably Expected Costs,* 365 I.C.C. 819, 829–830 (1982), when railroads are part of a conglomerate or holding company their specific capital structure components may be impossible to determine or they may reflect the capital structure of the parent company instead of the railroad. Therefore, the regulations allow such railroads to use the railroad industry's debt/equity ratio as determined in our most recent adquacy of railroad revenue determination. The regulations further propose that if a railroad uses the debt/equity ratios developed by the Commission, then the railroad must also use the cost for equity and debt most recently developed by the Commission. To do otherwise would result in a mixture of industry wide and individual railroad factors. These same guidelines apply to equipment and property.

4. *Application of the Effective Tax Rate.* The cost of equity capital will be increased to include an allowance for the actual taxes that would be paid by the railroad if the property were sold and the proceeds reinvested.

In comments filed when we originally made this proposal, certain parties favored using the statutory tax rate to calculate the rate-of-return applied against the valuation of rail properties. They argued that the cost of capital for rail abandonment purposes should be calculated consistently with the methodology applied in *San Antonio, Tex.* v. *Burlington Northern, Inc.,* 361 I.C.C. 482 (1979), vacated and remanded on other grounds, *San Antonio, Tex.* v. *United States,* 631 F.2d 831 (D.C. Cir. 1980) and *Adequacy of Railroad Revenue—1978 Determination,* 362 I.C.C. 198 (1980). These decisions applied the statutory tax rate in recognition of Congressional intent to provide the railroads certain tax benefits by creating an incentive for plant modernization and growth.

However, rail plant for which subsidy is offered is not ordinarily the subject of modernization, but is dedicated to the movement of rail traffic showing little or no promise of growth. In recent decisions prescribing unit coal train rates we have used the statutory tax rate to provide the railroad with the monies that Congress intended to be freed for reinvestment in new rail plant. Unlike plant dedicated to new and growing rail service, capital attraction is not essential for a continuation of rail service if a segment requires no substantial new investment by the carrier in road properties. The focus of the subsidy calculation is short term and the central question is whether service should be continued for a limited period. Thus, it would be inappropriate to use the statutory tax rate to calculate the rate-of-return on road property for subsidy purposes.

5. *Reasonable Return for Railroads in Reorganization.* In Ex Parte No. 274 (Sub-No. 2), we had proposed that a railroad in reorganization ("bankrupt railroad") be allowed to calculate a reasonable rate of return on either of two bases. The first method would calculate the mean cost-of-capital for all railroads not in reorganization ("non-bankrupt railroads"). Alternatively, a bankrupt railroad could calculate its reasonable return from a representative sample of non-bankrupt railroads.

The first method is directly derived from the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and will not be changed. However, the second method (the representative sample) will be replaced with the option of using the Commission's composite cost-of-capital findings in its annual railroad revenue adequacy determination proceedings under the procedures promulgated in Ex Parte No. 393, *supra.* For example, in our 1980 revenue adequacy finding, *Railroad Revenue Adequacy—1980 Determination,* 365 I.C.C. 285 (1981), we found the after-tax composite cost-of-capital to be 12.1 percent.

6. *Investment Tax Credit.* In calculating the return on value for equipment, the investment tax credit will be calculated for the locomotives and freight cars that serve the line segment and will be subtracted from the return on investment which has been calculated on a statutory tax rate basis.

If a carrier is required to continue service under a *subsidy* agreement, then the carrier will have to use equipment which otherwise could be sold for its current market value or could be used to offset purchases of similar equipment at market prices. Under the 4R Act and the Staggers Act, the carrier is compensated for the current cost of freight cars, locomotives, and other equipment. We think it is preferrable to calculate the return on investment related to new equipment using the statutory tax rate. We also think it proper to make an offsetting adjustment. A presumed investment generates an investment tax credit which can be used to reduce the carrier's tax liability. Thus the subsidy requirement should be reduced accordingly.

We acknowledge that a carrier might not purchase new equpment specifically for use on a line segment operating under subsidy. Subsidized operations, however, do have an impact on the carrier's overall equipment needs. The continuation of line operations which the carrier had planned to terminate requires the carrier to adjust its equipment purchasing plans. The carrier will need to buy more new equipment sooner than it had planned so that it can provide service over a rail system which is larger than it had planned to operate. Our regulations recognize this added expense and account for it with respect to calculating the cost of equipment. This added expense, however, also generates the advantage of the investment tax credit related to the purchases. To reflect accurately the costs and benefits associated with continued operations under subsidy, the proposed regulations attribute to the line the tax credit that would be generated

by the purchase of equipment similar to that used on the line.

The investment tax credit, as calculated for subsidy purposes, will reduce only that portion of the return on investment for equipment which is allowable under the Tax Reform Act of 1976. Under this statute, an investment tax credit of 10 percent of the asset value is allowable up to an established percentage of that year's tax liability.[3] The tax liability to which these investment tax credit limits apply is calculated by determining the difference between the return on investment if taxes were paid at the statutory rate as opposed to the return-on-investment if no taxes were paid. An example of how the investment tax credit will be computed is set forth in Appendix B to this Notice.

C. Rehabilitation

Subsidization costs include the expenses of rehabilitating the line to FRA Class 1 standards (or to such higher level as the subsidizer may require). These costs must be included in full in calculating the subsidy amount for the year during which they are incurred. Rehabilitation or upgrading of a line under subsidy does not give the subsidizer any ownership interest in the line or a lien on the road properties. The subsidizer has no right to claim any part of the net liquidation value of the line upon termination of subsidized operations.

Nevertheless, a subsidizer should not be required to pay the railroad a return on the increment of the value of the road property solely attributable to improvements paid for entirely by the subsidizer. Therefore, the amount of the subsidized rehabilitation expenses shall be subtracted from the net liquidation value of the road property in calculating return on value for subsidy purposes.

II. Labor Costs

Crew wages and fringe benefits of employees on the line segment are expenses attributable to the line which the carrier will no longer incur following abandonment. In some cases, however, parties have questioned whether wages and fringe benefits costs will really be avoided because of (1) employee protective conditions imposed under 49 U.S.C. 10903(b)(2) or the provisions of specific union agreements, and (2) the use of the crews on other parts of the carrier's rail system.

As we stated in *Illinois Central Gulf R. Co.—Abandonment*, 363 I.C.C. 93, 95 (1980), *rev'd sub. nom. City of Cherokee* v. *I.C.C.*, 641 F. 2d 1220 (8th Cir.), cert. denied ——— U.S. ——— (1981), "every ongoing out-of-pocket cost of a particular rail operation, that cannot be properly reallocated to any other revenue-producing operation, must be considered as part of the cost of the operation proposed for abandonment." Thus, where the wage costs associated with the line segment are not attributable to any other line, "the only rational way these wage costs can be treated is as costs of the particular line whose abandonment is at issue." *Id.* at 98.[4]

The fact that the employee protective conditions to the abandonment or union agreements require applicant to continue compensating involved employees for a certain time does not negate the long-term avoidability of these labor costs. Employee protective conditions and union agreements merely defer for a limited time some or all of the labor cost savings which the carrier will ultimately be able to realize. These labor costs cannot be ignored when considering the abandonment of a line segment.

Indeed, wage costs are properly attributed to a line even when employees are not exclusively assigned to the line segment designated for abandonment, or where the segment employees will be reassigned to other parts of the carrier's system (rather than being dismissed). When a worker on an abandoned line is transferred to other work on applicant's system, the railroad company will have less need to hire new workers. This is equally true where the employee had been exclusively assigned to the line segment designated for abandonment, as well as where the employee had been assigned to more than one line segment.

Accordingly, we have added section 1121.42(r) which clarifies that labor expenses are attributable, and ultimately avoidable, costs of a segment proposed to be abandoned.

III. Property Taxes

The present abandonment regulations properly include property taxes within the costs of a branch line designated for abandonment (49 CFR 1121.42(j)). We propose to clarify the appropriate treatment of these costs.

In certain past cases, property taxes were not considered as avoidable costs when no firm offers to purchase the property (and thus relieve the carrier of the property tax liability) had been received at the time of the abandonment proceeding. However, we stated in *Illinois Central Gulf R. Co.—Abandonment, supra*:

> It would be unreasonable to require an applicant to produce evidence of firm offers to purchase property it proposes to abandon, where the completion of the abandonment proceedings must necessarily result in a long delay in acting on such offers, and where in any event there is little reason to doubt that such property can be sold. The ALJ was apparently concerned that, in the absence of firm offers, it is not completely certain that the applicant will be able to sell the property and thus terminate its liability for taxes on Day One following the abandonment. That is not the test. A cost is avoidable if it can with reasonable certainty be avoided within a reasonable time following abandonment * * * and even if some particular portion were ultimately to prove unsaleable for nonrailroad purposes, ICG could simply cease paying taxes on that portion and allow it to be sold for taxes, thus terminating the out-of-pocket expense. [Emphasis added].

363 I.C.C. at 100, *aff'd on this issue*, 641 F. 2d 1220 (8th Cir. 1981).

Moreover, even in States where a true *ad valorem* tax is not levied, abandonments can reduce a carrier's property tax liability, albeit on a cumulative or long-range basis. In States not levying an *ad valorem* tax, the amount of the property tax attributable to a line and avoidable through abandonment will be deemed to be the *pro rata* amount by which the carrier's ultimate property tax liability will be reduced in the long run by virtue of the abandonment. In determining this amount, applicants may look to the cumulative effect of the carrier's abandonments within the involved State or States.

Accordingly, we propose to revise § 1121.42(j) to reflect this policy position.

IV. Opportunity Costs

We have decided that "opportunity costs" are relevant in determining whether the public convenience and necessity permit abandonment. *Abandonment of Railroad Lines—Use of Opportunity Costs*, 360 I.C.C. 571 (1979). A carrier may present evidence that the assets tied up in a line proposed to be

[3] The maximum limits for the investment tax credit are as follows: 1980—80 percent; 1981—70 percent; 1982—60 percent; and 1983 and 1984—50 percent.

[4] The subsequent reversal of *Illinois Central Gulf* does not preclude reliance on the principles enunciated in that decision. As noted by the Seventh Circuit Court of Appeals in *International Minerals & Chemical Corp.* v. *I.C.C.*, 656 F. 2d 251 (7th Cir. 1981), "[t]he general principles underlying the Illinois Central Gulf decision remain intact; it was only the narrow application of those principles to a certain narrow fact situation that caused the controversy in *Cherokee*." 656 F. 2d at 255. We continue to conclude that all labor costs are eventually avoidable. See Docket No. AB-43 (Sub-No. 74), *Illinois Central Gulf Co.—Abandonment—in Henderson, Union, Webster, Crittenden and Caldwell Counties, Ky.* (not printed), served January 11, 1982.

abandoned may be used more profitably in some other capacity.

We considered the methodology to be used in determining opportunity costs in *Texas and Pacific Railway Company Abandonment*, 363 I.C.C. 666 (1980) (*Texas and Pacific*). In that decision we concluded that opportunity costs could be determined by applying the railroad's cost of capital to the net liquidation value of the involved line. Under the *Texas and Pacific* methodology, the railroad's cost of capital is the sum of the weighted cost of debt plus the weighted cost of equity (adjusted to a pre-tax basis), less the projected rate of inflation for the next year. Nevertheless, we remain willing to consider other reasonable, fully explained methodologies.

New § 1121.42(q) reflects our view that opportunity costs are to be considered as a factor in abandonment proceedings.

V. Other Changes

A. System Diagram Maps

Recently we granted a railroad a waiver of certain of our abandonment regulations dealing with the filing of system diagram maps (SDM). See, Finance Docket No. 29891, *The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, and Western Maryland Railroad Company—Petition for Waiver the Black and White System Diagram Map* (not printed), served May 11, 1982. We propose to modify our regulations to make it unnecessary for carriers to seek similar waivers in the future.

Specifically, we waived the requirements that the carriers file (1) a black-and-white version of the SDM (although it is unclear that such a requirement existed) or (2) a black-and-white version of the SDM suitable for **Federal Register** publication. We granted the waiver because there appeared no reason to require petitioners to go through the expense of complying with the regulations in light of our decision not to publish SDMs in the **Federal Register**. Moreover, it did not appear that the public would be adversely affected since the carrier still had to comply with the requirements of newspaper publication, posting and furnishing copies to the public. Accordingly, we propose to revise sections 1121.20, 1121.22 and 1121.23 to reflect these changes.

B. Filing of Environmental Data

Another change in filing requirements deals with the filing by railroads of certain environmental data. Because of the statutory requirements in many of the Federal laws governing the protection of the environment, we propose that the Commission be notified of the existence of and status of historic sites and structures on the line to be abandoned before an application is filed. See, e.g., National Historic Preservation Act, 16 U.S.C. 470. According, at the time a carrier files its notice of intent to abandon a line, we propose to require it to provide the Commission with the data required by section 1108.7(c)(10).[5] A new Section 1121.30(c) will be added to reflect this change.

In addition, the Alabama Historical Commission in a letter sent to our Energy and Environment Branch dated July 29, 1982, proposed that as a condition to abandonment the Commission require carriers to provide a cultural resource assessment report if one is requested by the relevant state historical commission. Although at this time we are not prepared to propose a regulation requiring such a report, we specially invite comments on this proposal from the industry and affected state agencies. If it appears that the proposal has merit our final regulations will include a suitable provision.

C. Filing of Offer of Financial Assistance Data

After an abandonment is granted, offers of financial assistance to acquire the line or subsidize continued operations are permitted, 49 U.S.C. 10905. If the parties are unable to reach agreement the Commission has the authority to set the terms of purchase or subsidy following a request by either party. The commission decision setting the terms must be issued within 60 days of the request.

Currently, there are no time frames for filing information supporting the request. As a result, in one recent case the carrier filed data supporting its estimate of the appropriate purchase price less than two weeks before the deadline for the issuance of our decision. See, Docket No. AB–43 (Sub-No. 85F), *Illinois Central Gulf Railroad Company—Abandonment Between Cisco and Green's Switch, IL* (not printed), served August 24, 1982. Although we considered the carrier's evidence in that case, we are now proposing a change in our regulations to exclude such late-filed materials. Accordingly, we have proposed the addition of § 1121.38(1)(7) which would establish a 30 day time limit. Any evidence filed more than 30 days after the request to set the terms was filed would be subject to rejection.

D. Waiver of Regulations

A new § 1121.34 (e)(5) has been proposed in recognition of the Commission's long-standing practice of allowing applicants in an abandonment proceeding to petition for waiver of certain filing requirements. The new regulation clearly reflects the existing policy that a waiver must be obtained before the filing of the abandonment application. *Cf.* Docket No. AB–43 (Sub-No. 66F), *Illinois Central Gulf Railroad Company—Abandonment—In Christian, Fayette, Marion and Shelby Counties, IL* (not printed), decided October 31, 1980.

VI. General Statement of Modifications

In the final regulations to be issued, we will make editorial modifications and conform the language to improve the clarity of the regulations. For example, any reference in the regulations to provisions of the former Interstate Commerce Act will be changed to reflect the Revised Interstate Commerce Act. These modifications will not be substantive.

Public Comment

We invite public comment on our proposed revisions to the abandonment regulations. After considering all the comments, we shall issue final revised rules governing abandonment proceedings.

Regulatory Flexibility Analysis

The proposed revisions will not increase the burdens on regulated carriers or interested members of the public, including small entities. For the foregoing reasons, it is certified that the revised regulations proposed in this proceeding, if adopted, will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1121

Administrative practice and procedure, Railroads.

This rulemaking notice is issued under the authority of 49 U.S.C. 10321, 10362, and 10903–06.

Decided: September 28, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

[5] The current regulations governing the contents of abandonment applications indicate that the regulations governing environmental impact can be found at § 1108.12 (b) and (c). That is incorrect. Those regulations are in section 1108.7. Accordingly, § 1121.32(f) will be changed to reflect this fact.

Commissioner Andre dissented with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Andre, dissenting:

I would have revised the notice so as to request comments on whether we should propose a change in the *Texas & Pacific* methodology for determining opportunity costs (described in part IV of the notice). The change that I proposed would have eliminated the deduction of the projected rate of inflation for the following year from the rate of return to be multiplied by the net liquidation value of the line. Those who participate in this proceeding would do well to comment on this change, for I submit that the deduction of the projected rate of inflation does not have a sound economic basis.

I note that this agency recently eliminated a similar deduction of the projected rate of inflation in Ex Parte No. 402, *Reasonably Expected Cost,* 365 I.C.C. 819, 830 (served August 4, 1982). We should have requested comments on whether the use of an inflation deduction is any more appropriate in the abandonment situation than in the determination of reasonably expected costs.

In abandonment proceedings, there are two possibilities: (1) allow the railroad to abandon the property when it wants to do so, and (2) force the railroad to keep the property into the indefinite future for the benefit of shippers. These two possibilities determine a meaningful definition of opportunity cost in this context—what the railroad would have to give up if it were not allowed to sell the property and invest the proceeds elsewhere *at the time that the application is filed.* It is the sum that the railroad would lose *by not being able to sell the property at all.* It is not the sum that the railroad would lose by being forced to retain the property only until some date after the filing of the application.

For example, in year 1, the opportunity cost of capital would be the value of the property during the first year after filing multiplied by the allowed rate of return. In year 2, the opportunity cost would be the (perhaps higher) value of the property *during year 2* multiplied by the allowed rate of return. The process would continue for years 3, 4, * * * into the indefinite future. (If we were interested in the *total* opportunity cost *as of* year 1, we would reduce each of the opportunity costs for years 2, 3, 4 * * * to their values in year 1 by use of a discount factor and take the sum of the reduced values.)

For the purposes of computing opportunity costs, there should not be any give-back or deduction merely because of an inflationary rise in the value of the property during the indefinite future period when the railroad would be forced to keep the property. If anything, the increased value of the property upon sale in a future year would *increase* the opportunity costs for that year, not decrease them:

(1) In the first place, when the railroad is forced to hold on to property that it wants to sell, property which frequently produces an income of zero, it is not receiving any monetary benefit from the property. The fact that a gain would be realized *if* the property were later allowed to be sold does not lessen the opportunity costs which are borne while the property is being held. As an analogy, if a law were passed preventing me from living in my house, my loss would be the rent that I would have to pay to live elsewhere, not the rent *minus* the paper gains from the annual inflationary increase in the value of my property.

(2) Much of the gains from the appreciation of property in later years are purely the result of inflation, leaving the railroad no better off in *real* terms. The gains are merely paper gains. Thus, if there is a deduction of the projected rate of inflation from the allowed rate of return, the railroad will end up in a worse position than if there was no inflation. In fact, if the projected inflation rate were to exceed market interest rates, the *Texas & Pacific* methodology could result in an opportunity cost of zero, a result which would be absurd because all transferable resources have at least some value in an alternate use.

I would also point out that, if we were to accept the view that opportunity costs must reflect a give-back or deduction due to inflationary increases in the value of property, consistency would also require us to do things like limit rate increases on the grounds that railroads should be sharing the paper gains from property appreciation with the ratepayers. This is not standard regulatory practice.

The private sector does not make a similar adjustment when firms determine whether they want to sell property:

(1) If a railroad were free to sell its property, it would not make an inflation adjustment to the price of the property in determining whether its value could be put to better use in an alternate investment. By *not* being allowed to abandon the property, a railroad is giving up (or bearing the opportunity cost of) a market rate of return on the *actual* (non-inflation adjusted) proceeds from a current sale of the property.

(2) *The Texas & Pacific* decision was incorrect to state (363 ICC at 675) that the inflation adjustment is necessary in order to avoid "double counting" the effect of inflation on rate of return. In inflationary times, real assets (such as land) will tend to appreciate in value as investors adjust expected (inflation-influenced) rates of return to present values and thereby capitalize them into their offering prices for the assets. The resulting capital gain is not viewed as a "double compensation" for inflation. It merely allows investors to be able to receive a purchase price for their assets which reflects inflation-influenced return expectations *when* the property is sold.

If the market does not view this type of capital gain as double compensation for inflation, we should not do so here.

Appendix A

49 CFR Part 1121, is proposed to be amended as follows:

PART 1121—ABANDONMENT OF RAILROAD LINES AND DISCONTINUANCE OF SERVICE

§ 1121.20 [Amended]

1. Paragraph (d) of § 1121.20 would be removed.

2. Paragraph (c) of § 1121.22 would be revised to read as follows:

§ 1121.22 Filing and publication.

* * * * *

(c) The carrier shall (1) publish in a newspaper of general circulation in each county containing category 1–3 lines or lines being amended, a notice containing: (i) a black-and-white copy of the system diagram map (or a portion of map clearly depicting its lines in that county); and (ii) a description of each line; (2) post a copy of the newspaper notice: (i) in each agency station or terminal on each line in categories 1–3 and on each line which has been amended; or (ii) if there is no agency station on the line, at any station through which business for the line is received or forwarded; (3) furnish, at reasonable cost, upon request of any interested person, a copy of its system diagram map (either color-coded or black-and-white); and (4) notify interested persons of this availability through its publication in the appropriate county newspaper.

* * * * *

3. Paragraph (a) of § 1121.23 would be revised to read as follows:

§ 1121.23 Amendment of the system diagram map.

(a) Each carrier shall be responsible for maintaining the continuing accuracy of its system diagram map and the accompanying line descriptions. Amendments may be filed at any time and will be subject to all carrier filing and publication requirements of § 1121.22 as they apply to the amendment and each individual line which has been amended.

* * * * *

4. Paragraph (c)(1) of § 1121.23 would be revised to read as follows:

§ 1121.23 Amendment of the system diagram map.

* * * * *

(c) * * *

(1) An amended and updated color-coded system diagram map and descriptions which shall be subject to the filing and publication requirements of § 1121.22 as they apply to the amendment and each individual line which has been amended; or

* * * * *

5. A new paragraph (c) would be added to § 1121.30 to read as follows:

§ 1121.30 Notice of intent to abandon line or discontinue service.

* * * * *

(c) The carrier shall file with the Commission at the time it files its Notice of Intent to abandon a line a copy of all material relating to historic cites and structures which must be filed pursuant to § 1108.7(c)(10).

6. Paragraph (f) of § 1121.32 would be revised to read as follows:

§ 1121.32 Contents of application.

* * * * *

(f) *Environment impact.* The applicant shall submit as part of its abandonment or discontinuance application full and complete information with regard to the environmental impact of the proposed abandonment or discontinuance in compliance with § 1108.7. If certain information required by the environmental regulations duplicates wholly or in part information required elsewhere in an abandonment or discontinuance application, the environmental information requirements may be met by a direct and specific reference to the location of the required information elsewhere in the abandonment or discontinuance application.

* * * * *

7. A new paragraph (e)(5) would be added to § 1121.34 to read as follows:

§ 1121.34 Filing and service of application.

* * * * *

(e) * * *

(5) Carriers filing applications which do not comply with the regulations in Subpart C, must first receive a waiver of the appropriate regulations from the Commission.

8. A new paragraph (l)(7) would be added to § 1121.38 to read as follows:

§ 1121.38 Finance assistance procedures.

* * * * *

(l) * * *

(7) Any evidence or information supporting the request to set the terms and any evidence or information contesting the suggested terms must be submitted within 30 days of the request to set the terms. Any evidence or information submitted after that date will be subject to rejection.

9. Paragraphs (g), (h), (j), (m) and (n)(2) of § 1121.42 would be revised and paragraphs (o), (p), (q), and (r) would be added to read as follows:

§ 1121.42 Calculation of avoidable costs.

* * * * *

(g) *Freightcar costs.* For all classes of railroads, the on-segment costs for time-mileage freight cars shall be calculated on the basis of the carrier's average costs per day and per mile. Those freight cars that are rented on a straight mileage basis are to be costed on the carrier's average cost per mile for each type of car rented on this basis. No costs are to be included in the calculation for private line (shipper owned) or other cars for which the railroad does not make payments. The costs per day and per mile shall be calculated separately for each type of car specified in Ex Parte No. 334, *Car Service Compensation—Basic Per Diem Charges,* 362 I.C.C. 884 (1980). The costs assigned to a line under this subsection are to be derived from the accounts listed below plus the return on investment in freight cars.

Operating expense group	Account No.
Repair and maintenance:	
Salaries and wages	11-22-42
Materials	21-22-42
Repairs by others—DR	39-22-43
Repairs for others—CR	40-22-42
Purchased services	41-22-42
Other expenses	61-22-42
Lease rentals—DR	31-22-00
Lease rentals—CR	32-22-00
Depreciation	
Other rents—DR	35-22-00
Other rents—CR	36-22-00

The system total of the repair and maintenance accounts, all accounts designated XX–XX–42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of the present "Rail Form A" apportionment factors (i.e., 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation). Freight car costs shall not include depreciation as determined in Account No. 62–22–00. Freight car depreciation shall be calculated in the manner set forth in subparagraph (3)(i). The system total receipts and payments for the hire of time-mileage cars, and the basic data used in the development of the car-day and car-mile factors, shall be taken from the surcharging carrier's latest Form R-1 and company records. The specific steps to complete the calculation are as follows:

(1) The total system car days by car type shall be calculated by: (i) averaging the surcharging carrier's freight car ownership at the beginning and end of the year (Form R–1, schedule 710, columns (b) and (k)); (ii) multiplying the average by the standard active number of car days (346) as developed in ICC Docket No. 31358; (iii) subtracting car days on foreign lines (source: company records); and (iv) adding the foreign car days on home line (source: company records). This procedure shall be followed for each car type specified in Ex Part No. 334, supra.

(2) The total railroad car miles shall be calculated by adding the loaded car miles for the surcharging carrier's owned and leased cars (Form OSA, column (d), items 5–010 through 5–027) to the empty car miles for the surcharging carrier's owned or leased cars (Form OSA, column (d), item 5–110 through 5–127). The total car miles loaded and empty, shall be calculated for each car type specified in Ex Parte No. 334, *supra.*

(3) The cost per car day shall be calculated for each type of time-mileage car by adding 50 percent of total freight car repair costs for each type (Form R–1, schedule 415, column (b)), and 60 percent of the depreciation shall be developed as follows:

(i) The current value for each type of car shall be calculated by first arriving at the current cost per car using the most recent purchase of this type by the railroad indexed to the midpoint of the year or a price quote from the manufacturer. This unit price shall be applied to the average number of this type of car owned by the carrier during the year. The current value developed for each car type is then multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Commission or company records.

(ii) Add 100 percent of the return on investment. The return on investment shall be determined by multiplying the current value of each type of car, developed in subparagraph (i) above, by one minus the ratio of accumulated depreciation to the total original cost investment. The total original cost investment is determined by multiplying the net current value by the rate of return calculated in § 1121.42(h)(2) of this title.

(iii) To the amounts for repairs, depreciation, and return on investment add the time portion of the railroad's payment for hire of time-mileage freight cars (Form R–1, schedule 414, column (g)); and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (Form R–1, schedule 414, column (d)). The total of these costs is divided by the total car days for each type developed in subparagraph A of this note.

(4) The cost per mile shall be calculated for each type of time-mileage car as follows. First, add: (i) 50 percent of the total freight train car repair cost for each car type (Form R–1, schedule 415, column (b)); (ii) 40 percent of the

total depreciation costs for each car type developed in subparagraph (C)(i); and (iii) the mileage portion of the carrier's payments for the hire of time-mileage freight cars (Form R–1, schedule 414, column (f)). Then, subtract the mileage portion of the carrier's receipts for hire of time-mileage freight cars (Form R–1, schedule 414, column (c)). Finally, divide the result by the total car-miles for each car-type developed in subsection (2), above.

(5) The costs per car day and per car mile developed in paragraphs (g) (3) and (4) of this section shall be applied to the total car days and total car miles for each car type accumulated on the line segment for all traffic originated and/or terminated on the segment plus those freight cars that bridge the line segment which are attributed to time-mileage freight train cars.

The on-segment costs for freight cars rented on a straight mileage basis shall be the surcharging railroad's total payments for mileage cars (Form R–1, schedule 414, column (e)), for each car type divided by the total miles on which the charges were based.

(h) *Return on investment—locomotive (Line).* The return on investment shall be calculated for each type or classification of locomotive that is actually used to provide service to the line segment. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line segment shall be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the subsidy year or an amount quoted by the manufacturer. The amount must be substantiated. This unit cost shall be multiplied by 1 minus the ratio of total accumulated depreciation to original total cost of that type of equipment owned by applicant-carrier, as shown by company records.

(2) The current cost of capital used in the calculation of return on investment for locomotives shall be the current before-tax cost of capital, weighted to the capital structure, and adjusted for the effects of the combined statutory Federal and State income tax rates. The current cost of capital, expressed as a percent, shall be calculated as follows:

(i) The railroad shall determine its permanent capital structure ratio of debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Commission's latest Determination of Adequate Railroad Revenues (currently Ex Parte No. 415) will be used. However, if the debt-equity ratio for the railroad industry is used, then the industry average equity rate and debt rate from the Commission's latest revenue adequacy finding must also be used in paragraphs (h)(2)(ii) and (iii) of this section.

(ii) The current cost of debt shall be the current rate quoted to the railroad for debt instruments normally used by the railroad in the financing of new equipment purchases such as bonds, equipment purchase trust certificates, etc. Because this is a before-tax rate there is no adjustment for income taxes.

(iii) The current cost of equity (the return that shareholders expect to earn on their investment) shall be determined from market data or comparable earnings of railroads or other organizations with similar operating risk characteristics. This current cost of equity capital is divided by one minus the combined statutory Federal and State income tax rate. This will result in the before-tax current cost of equity capital.

(iv) The current before-tax cost of debt is multipied by the capital structure ratio number for debt to obtain a weighted before-tax cost of current debt.

(v) The current before-tax cost of equity is multiplied by the capital structure ratio number for equity to obtain a weighted before-tax cost of current equity.

(vi) The results of paragraphs (iv) and (v) above are added together to determine the current cost of capital used in the calculation of return-on-investment for equipment.

(3) The annual return on investment for each category or type of locomotive shall be calculated by multiplying the replacement cost developed in paragraph (1) above by the current cost of capital determined in paragraph (2) above.

(4) The return on investment for each type of locomotive shall be assigned to the line segment on a ratio of the locomotive unit hours on the segment to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives: yard-diesel; yard-other; road-diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used serve the segment, as developed in paragraph (i) above, by the system average locomotive unit hours per unit for the applicable type developed in paragraph (ii) above.

(5) The cost assigned to the segment for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (h)(3) by the ratio(s) developed in paragraph (h)(4) of this section.

* * * * *

(j) *Property taxes (Line).* (1) Property taxes, in the amount allowed below, shall be deemed attributable costs of the rail properties to be abandoned if applicant-carrier intends to sell or otherwise dispose of those properties after abandonment. Unless otherwise shown, it will be presumed that the properties will ultimately be sold or otherwise disposed of after abandonment. The attributable property taxes shall be computed as follows:

(2) In States where a true *ad valorem* tax is levied, the amount of property taxes shall be the amount levied against the property on the line segment, based on the value of certain kinds of railroad property, such as track, land, buildings, and other facilities.

(3) In States where a true *ad valorem* tax is not levied, a *pro rata* share of the applicant's tax liability may be deemed attributable to the line and avoidable through abandonment. Although the tax reduction might not be immediate and may occur only as the cumulative result of several abandonments, applicant may submit evidence of the allocated share of taxes attributable to the line proposed to be abandoned. Evidence of the *pro rata* share of taxes attributable to the line will be considered, provided that applicant explains fully its method of allocation of a share of its taxes to the line segment.

(4) In States where property taxes are assessed on the basis of a formula of a State-wide valuation of property and the line segment to be abandoned is included in the valuation of the railroad operating the service, the tax on each segment shall be based on the distribution of the assessment by the State to that segment and the application of the appropriate tax rate or rates.

(5) In States where the real property taxes are assessed and levied against the owner of the property but the rolling stock is assessed to the railroad operating the service on the basis of a formula of a State-wide valuation of

property, the tax on rolling stock attributable to each line segment shall be determined as follows:

(i) Using ratio of the cost of equipment (as used in the formula) to the total of all property costs (as used in the formula);

(ii) Apply that ratio to the total State assessment to determine the portion of the assessment attributable to rolling stock;

(iii) Allocate the rolling stock assessment thus determined to each line segment on the basis of car and locomotive unit miles on the segment to total car and locomotive unit miles in the State; and

(iv) Apply appropriate tax rate or rates to the allocated assessment thus determined.

* * * * *

(m) *Rehabilition.* (1) For abandonment purposes the applicant carrier shall project the amounts necessary to permit efficient operations over the line segment. Carrier shall indicate the level of FRA Class safety standard to be attained with the amount of expenditure. *See* 49 CFR Part 213. Applicant-carrier, in making its projection of rehabilitation costs, shall give consideration to (i) the cost to attain the lowest operationally feasible track level, (ii) the cost to attain the rehabilitation level resulting in the lowest operating and rehabilitation expenditure, or (iii) the cost to attain the rehabilitation level resulting in the lowest loss, or highest profit, from operations.

(2) For subsidy purposes rehabilitation costs shall not be included unless:

(i) The track does not meet minimum Federal Railroad Administrative Class 1 Safety Standards (49 CFR Part 213), in which case the railroad will furnish, with the abandonment application, a detailed estimate of the costs to rehabilitate the track to the minimum level; or

(ii) The potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(n) * * *

(2) The procedure for determining the off-branch costs will use the existing Rail Form A cost formula. This formula will be applied to the latest Annual Report Form R–1 filed by the railroad, with two exceptions. The amount used in the formula for freight car depreciation will be calculated using the procedure discussed in § 1121.42(g)(3) above, applied to the average total car fleet of the railroad. The return on investment in freight cars shall be computed by developing the repalacement cost of the carrier's average car fleet owned during the year for which the latest Annual Report Form R–1 is filed. The replacement cost of the average car fleet multipled by the current cost of capital developed in § 1121.42(g)(3) above shall be used in the determination of off-branch costs.

* * * * *

(o) *Locomotive Depreciation.* The depreciation cost for locomotives used on the line shall be calculated using the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the line will be based on the most recent purchase of that particular type and size locomotive by the carrier indexed to the midpoint of the year or an amount quoted by the manufacturer.

(2) The depreciation rate that will be applied to the replacement cost shall be the carrier's component rate for each type of locomotive as reported in the latest Annual Report Form R–1 submitted to the Commission or from company records.

(3) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (o)(1) by the rate from paragraph (o)(2).

(4) The depreciation expense for each type of locomotive shall be assigned to the line on the ratio of the hours incurred serving the line to the average system locomotive unit hours in service by each of the following categories of locomotives: yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the line shall be the same as that developed in § 1121.42(h)(4) of these regulations.

(5) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (o)(3) by the ratio(s) developed in paragraph (o)(4).

(p) *Investment tax credit calculation.* The investment tax credit calculation shall apply to all railroads that used the statutory tax rate consideration in calculating the return on investment for locomotives in section 1121.42(h) and for freight cars in sections 1121.42(g) and 1121.42(n) of these regulations. The investment tax credit shall be calculated in accordance with the following procedure:

(1) Determine the amount included in the return on investment for locomotives and freight cars in sections 1121.42(h), 1121.42(g) and 1121.42(n) that resulted from the cost of equity capital being increased for an allowance of the statutory tax rate and assigned to the line segment.

(2) The maximum investment tax credit is determined by multiplying the percent of the tax liablity to which the tax credit may apply, from the Tax Reform Act of 1976, to the amount developed in step (1) above.

(3) The total investment tax credit for the newly purchased equipment is determined by multiplying the purchase price of the equipment by the amount of investment tax credit currently prescribed by law (which is 10 percent at this time). This calculation shall be made sparately for each of the return-on-investment procedures in these regulations.

(4) The investment tax credit on the equipment that is assignable to the line segment shall be determined, for each of the three categories of return on investment, by assigning the amount determined in step (3) above to the line segment in the same proportion as the return on investment was assigned to the line segment.

(5) The investment tax credit that is attributable to the line segment shall be the lesser of the amounts determined in paragraphs (p) (2) and (4).

(q) *Opportunity costs.* Applicant-carrier may, at its discretion, present evidence of its opportunity costs, if the assets engaged in the line proposed to be abandoned could be used more profitably in some other capacity. Opportunity costs may be calculated in accordance with the methodology approved by the Commission in abandonment adjudications, or by using any other reasonable, fully explained method.

(r) *Labor costs.* (1) The salaries, wages and fringe benefits of train and engine crews exclusively assigned to the line segment shall be deemed attributable costs of the segment. The salaries, wages, and fringe benefits of train and engine crews not exclusively assigned to the line segment shall be deemed attributable costs of the segment to the extent they are shown to be apportionable to the segment to be abandoned.

(2) These costs shall be deemed attributable notwithstanding any obligation of applicant to provide employee protection for such employees after the abandonment, inasmuch as these employees may be used by applicant in lieu of new employees or to replace retiring employees, and since any employee protection benefits will cease after a limited period.

10. Paragraph (b)(2) of § 1121.43 would be revised to read as follows:

§ 1121.43 Apportionment rules for the assignment of expenses to on-branch costs.

* * * * *

(b) * * *

(2) *Locomotive Depreciation.* Locomotive depreciation shall be calculated and assigned in accordance with the procedures set forth in § 1121.42(o).

* * * * *

11. Section 1121.45 would be revised to read as follows:

§ 1121.45 Reasonable return.

(a) A rail carrier not in reorganization ("non-bankruptcy carrier") shall furnish to the Commission, and to any potential subsidy offeror, a substantiated statement showing its current cost of capital. The railroad's cost of capital shall be the current before-tax cost of capital, weighted to the actual capital structure adjusted for the effects of the combined effective Federal and State income tax rate. This rate of return, expressed as a percent, shall be calculated as follows:

(1) The railroad shall determine its permanent capital structure ratio for debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad. If this calculation is not possible or also not representative because the railroad is part of a conglomerate, the debt-equity ratio from the Commission's latest Determination of Adequate Railroad Revenues (currently Ex Parte No. 415) will be used. However, if the debt-equity ratio for the railroad industry is used then the industry average equity rate and debt rate from the Commission's latest revenue adequacy finding must also be used in paragraphs (a) (2) and (3) of this section.

(2) The current cost of debt shall be the current rate quoted to the railroad for debt instruments normally used by the railroad in the financing of new equipment purchases such as bonds, equipment purchase trust certificates, etc. Because this is a before-tax rate there is no adjustment for income taxes.

(3) The current cost of equity shall be determined from market data or comparable earnings of railroads or other organizations with similar risk characteristics, to find the return that shareholders expect to earn on their investment. This current cost of equity capital is divided by one minus the combined effective Federal and State income tax rate. This will develop the cost of equity capital on a before-tax basis.

(4) The current before-tax cost of debt is multiplied by the capital structure ratio number for debt to obtain a weighted before-tax cost of current debt.

(5) The current before-tax cost of equity is multiplied by the capital structure ratio number for equity to obtain a weighted before-tax cost of current equity.

(6) The results of paragraphs (a) (4) and (5) are added together to determine the current cost of capital for railroads not in reorganization.

(b) A rail carrier in reorganization ("bankrupt carrier") shall furnish to the Commission, and to any potential subsidy offeror, a substantiated statement showing the mean cost of capital for all non-bankrupt rail carriers. As an alternative to developing the mean cost of capital for non-bankrupt railroads, the carrier may use the cost of capital as determined by the Commission in its latest findings related to the "Adequacy of Railroad Revenue" determination. The cost of capital determined by either method shall have the weighted cost of equity capital calculated on a before-tax basis by dividing that amount by one minus the railroad's combined effective Federal and State income tax rate. This amount, added to the weighted cost of debt determined by the procedure used, shall be the cost of capital for a bankrupt rail carrier.

(c) The "rate of return" element of the subsidy payment shall be computed by applying the current cost of capital as determined above to the investment base determined pursuant to § 1121.44 of this part. The cost of equity capital shall be adjusted annually to reflect the carrier's actual current effective Federal and State income tax rate. In the event the carrier and the subsidizers cannot agree on the amount of the return element, this amount will be determined by the Commission, and the Commission's determination shall be final.

Appendix B

Investment Tax Credit Calculation

An example of how the determination of the investment tax credit will be computed is shown below. The example is based on the following assumptions: the statutory tax rate is 46 percent; the railroad's cost of debt is 10 percent; the cost of equity is 14 percent; the net current investment of the equipment is $250,000; and the year is 1980.

Cost of Capital Without Tax Provision

Item	Rate (percent)	Before tax ratio	Before tax rate (percent)	Debt/equity ratio (percent)	Cost of capital (percent)
Debt	10 (÷)	1.0 (=)	10 (×)	40 (=)	4.0
Equity	14 (÷)	1.0 (=)	14 (×)	60 (=)	8.4
Total					12.4

Cost of Capital With Statutory Tax Provision

Item	Rate (percent)	Before tax ratio	Before tax rate (percent)	Debt/equity ratio (percent)	Cost of capital (percent)
Debt	10 (÷)	1.0 (=)	10 (×)	40 (=)	4.0
Equity	14 (÷)	.54 (=)	25.9 (×)	60 (=)	15.5
Total					19.5

Net Current Investment, $250,000
Return on Value with tax provision, ($250,000×12.4%), $31,000
Return on Value with tax provision, ($250,000×19.5%), $48,750
Provision for tax liability, ($48,750−31,000), $17,750
Maximum Investment Tax Credit offset, (1980−80%), $14,200
Investment Tax Credit, ($250,000×10%), $25,000
Actual Tax Liability Reduction is the Lesser of 80% of liability or 10% of investment

In this example the difference between the $48,750 and the $31,000 is the provision for the payment of taxes at the statutory rate in order for the equity capital to return 14 percent after taxes. This difference, $17,750, is the base tax liability which may be partially offset by the investment tax credit. The example is for the year 1980, in which the maximum offset is 80 percent of the tax liability, or $14,200 ($17,750×.80). The current investment tax credit rate is 10 percent, which would yield $25,000 on the $250,000 net current investment value of this asset. The amount

allowable is 10 percent of the tax liability. Since 80 percent of the liability is less than the 10 percent investment tax credit ($14,200 versus $25,000), the investment tax credit would reduce the tax liability by $14,200, thus reducing the return on investment to $34,550 ($48,750 −14,200), with the railroad still receiving 14 percent after taxes on its equity capital. This amount would then be assigned to the line segment on the service unit basis identified in the applicable sections of these regulations.

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Notices

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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

Stanislaus National Forest Grazing Advisory Board; Meeting

The Stanislaus National Forest Grazing Advisory Board will meet at 9:00 a.m., on November 12, 1982, in Conference Room–A, of the Forest Superivisor's Office, 19777 Greenley Road, Sonora, California. The purpose of this meeting is to consider (1) priorities for use of range betterment funds, (2) allotment management plans, and (3) establishment of any necessary bylaws. This is the Board's first annual meeting.

The meeting will be open to the public. Persons who wish to attend should notify me at 19777 Greenley Road, Sonora, California 95370 (209) 532–3671. Written statements may be filed with the committee before or after the meeting.

The committee has not established rules for public participation. Public members will be given an opportunity to speak on each subject.

Dated: September 23, 1982.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 82–27215 Filed 10–1–82; 8:45 am]

BILLING CODE 3410–11–M

CIVIL AERONAUTICS BOARD

[Docket 40888]

Assignment of Proceeding; IASCO Fitness Investigation

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications should be addressed to him.

Dated at Washington, D.C., September 28, 1982.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 82–27285 Filed 10–1–82; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82–00168. Applicant: Massachusetts Institute of Technology, Department of Ocean Engineering, Room 1–207, Cambridge, MA 02139. Instrument: Elements of a Cavitation Susceptibility Meter. Manufacturer: Delft Hydraulics Laboratory, The Netherlands. Intended use of instrument: See Notice on page 21905 in the **Federal Register** of May 20, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides measurement of bubble concentration, bubble size distribution and cavitation susceptibility. The National Bureau of Standards advised on the telephone on August 27, 1982 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–27282 Filed 10–1–82; 8:45 am]

BILLING CODE 3510–25–M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82–00250. Applicant: Medical College of Pennsylvania, Department of Anatomy, EP Building, 3200 Henry Avenue, Philadelphia, PA 19129. Instrument: JEM 100S Electron Microscope, and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See Notice on page 36684 in the **Federal Register** of August 23, 1982. Instrument ordered: March 24, 1982.

Docket No.: 82–00255. Applicant: Cornell University Medical College, 1300 York Avenue, New York, NY 10021. Instrument: Electron Microscope, Model JEM–100CX SEG with Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See Notice on page 32181 in the **Federal Register** of July 26, 1982. Instrument ordered: February 10, 1982.

Docket No.: 82–00258. Applicant: Albion College, 611 East Porter, Albion, MI 49224. Instrument: Electron Microscope, Model JEM–100CX with

Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See Notice on page 30539 in the **Federal Register** of July 14, 1982. Instrument ordered: September 14, 1981.

Docket No.: 82–00259. Applicant: The Medical College of Wisconsin, Inc., 8701 Watertown Plank Road, Milwaukee, Wisconsin 53226. Instrument: Electron Microscope, Model JEM–100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See Notice on page 32181 in the **Federal Register** of July 26, 1982. Instrument ordered: April 8, 1982.

Docket No.: 82–00265. Applicant: St. Joseph Hospital, 2900 N. Lake Shore Drive, Chicago, Ill. 60657. Instrument: Electron Microscope, EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 33528 in the **Federal Register** of August 3, 1982. Instrument ordered: July 16, 1980.

Docket No.: 82–00272. Applicant: University of South Alabama, Purchasing Department, Administration Building 285, Mobile, AL 36688. Instrument: EM 109 Electron Microscope with Trans Fiberoptic Photograph System. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 36685 in the **Federal Register** of August 23, 1982. Instrument ordered: May 26, 1982.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each instrument establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each instrument described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–27281 Filed 10–1–82; 8:45 am]

BILLING CODE 3510–25–M

Geophysical Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 82–00182. Applicant: Geophysical Institute, University of Alaska, Fairbanks, Alaska 99701. Instrument: Temperature Bridge Unit, GTB-1. Manufacturer: Richard Brancker Research Ltd., Canada. Intended use of instrument: See Notice on page 24166 in the **Federal Register** of June 3, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides extreme sensitivity and an accuracy of one ohm in 20,000 ohms or 0.0001°C under field conditions. The National Bureau of Standards advises in its memorandum dated August 5, 1982 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–27279 Filed 10–1–82; 8:45 am]

BILLING CODE 3510–25–M

Yale University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82–00136. Applicant: Yale University, Department of Chemistry, 225 Prospect Street, New Haven, Ct 06511. Instrument: Excimer Laser-Pumped Dye Laser System. Manufacturer: Lambda Physik GmBH & Co., KG, West Germany. Intended use of instrument: See Notice on page 15820 in the **Federal Register** of April 13, 1982.

Comments: No comments have been received with respect to this application. However, Molectron Corporation has provided additions to record dated August 23, 1982. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (March 13, 1981). Reasons: The foreign instrument provided a stability better or equal to the pump, high average power of 0.5 to 1.5 watt, and a high peak power of equal to or better than 1–5 watts with EMG 200/201 pump. The Department of Health and Human Services advises in its memorandum dated June 10, 1982 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scieintific value to the foreign instrument for the applicant's intended use which was available at the time of order.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this

instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-27280 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

[Permit No. 226(P171)]

Modification of Permit

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and 222.26 of the regulations governing endangered species permits (50 CFR Part 222), Scientific Research Permit No. 226 issued to Deborah A. Golockner-Ferrari, on April 7, 1978 (43 FR 17024) is hereby modified as follows:

Section B-9 is deleted and replaced by the following:

"9. This Permit is valid with respect to the taking authorized herein until December 31, 1985."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 27, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-27283 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-22-M

Surf Clam and Ocean Quahog Subpanel; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established a Surf Clam and Ocean Quahog Subpanel which will meet to discuss the Surf Clam and Ocean Quahog Fishery Management Plan.

DATES: The public meeting will convene on Friday, October 29, 1982, at approximately 10 a.m., and will adjourn at approximately 4 p.m., and will take place at the Sheraton Inn, Route 13, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901; telephone: (302) 674-2331.

Dated: September 29, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-27284 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-22-M

New Jersey Coastal Management Program

Notice is hereby given by the Office of Coastal Zone Management (OCZM) to approve an amendment to the New Jersey Coastal Management Program by the addition of the newly established New Jersey Coastal Resource and Development Policy entitled "Wetlands Buffer" (N.J.A.C. Section 7:7E-3.27).

It is the finding of the Office of Coastal Zone Management that this amendment does not have a significant effect on the human environment and therefore the preparation of an EIS is not required.

This is a new policy which would prohibit development within 300 feet of wetlands as defined in N.J.A.C. Section 7:7E-3.26 and within the drainage area of those wetlands, unless the development uses mitigating measures so that it would not have a significant adverse impact and would cause minimum feasible adverse impact on the wetlands or on the natural ecotone between the wetlands and the surrounding upland.

Interested parties have 30 days from the issuance of this notice to submit comments. If no serious disagreements to the proposed action are raised during this comment period, the Assistant Administrator for Coastal Zone Management intends to give formal approval to this amendment. Comments should be addressed to: Kathryn Cousins, North Atlantic Regional Manager, Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

Copies of the proposed amendment to the New Jersey Program have been distributed to all relevant Federal agencies. Interested parties wishing to obtain a copy of the amendment may request it from OCZM at the above address.

(Federal Domestic Assistance Catalog No. 11.419, Coastal Zone Management Program Administration)

Dated: September 28, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82-27236 Filed 10-1-82; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Systems of Records, Annual Publication

AGENCY: Commodity Futures Trading Commission.

ACTION: Publication of annual notice of the existence and character of each system of records that the Commodity Futures Trading Commission ("Commission") maintains which contains information about individuals.

SUMMARY: The purpose of this notice is to announce the existence and character of the systems of records of the Commodity Futures Trading Commission as required by the Privacy Act of 1974, Pub. L. 93-579, 5 U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(f), the Commission, on September 4, 1975, promulgated rules relating to records maintained by the Commission concerning individuals (40 FR 41056). The rules, as amended (17 CFR Part 146), deal with an individual's right to know what information the Commission has in its files concerning that individual, and that individual's rights to have access to those records, to petition the Commission to have inaccurate or incomplete records amended or corrected, and to not have personal information disseminated to unauthorized persons.[1]

Under 5 U.S.C. 552a(e)(4), the Commission is required to publish annually a notice of the existence and character of each system of records it maintains which contains information about individuals. This notice implements this requirement and, when read together with the Commission's rules, will provide individuals with the information they need to exercise fully their rights under the Privacy Act.

EFFECTIVE DATE: October 4, 1982.

FOR FURTHER INFORMATION CONTACT: Lynn K. Gilbert, Assistant Secretary to

[1] The full text of the Commission's rules implementing the Privacy Act should be consulted for a detailed description of the procedures to be followed.

the Commission for FOI, Privacy and Sunshine Acts Matters, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–3382.

Content of System Notices

Each system notice contains the following information:

1. The name of the system;
2. The location of the system;
3. The categories of individuals on whom records are maintained in the system;
4. The categories of records maintained in the system;
5. The authority for maintaining the system;
6. Each routine use of the records contained in the system, including the categories of users and the purpose of each use;
7. The policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
8. The title and business address of the agency official who is responsible for the system of records;
9. The agency procedures by which an individual can find out whether the system of records contains a record pertaining to that individual; and how to gain access to any record contained in the system of records pertaining to that individual, as well as how to contest the content of the records; and
10. The categories of sources of records in the system.[2]

The Location of Systems of Records

The eighth item described above calls for the address of the Commission office involved. The Commission maintains offices in the following locations:

2033 K Street, NW., Washington, D.C. 20581; telephone (202) 254–3382
2000 L Street, NW., Washington, D.C.; telephone (202) 254–5006
233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606; telephone (312) 353–9499
4901 Main Street, Room 208, Kansas City, Missouri 64112; telephone (816) 374–2994
One World Trade Center, Suite 4747, New York, New York 10004; telephone (212) 466–2071
10850 Wilshire Boulevard, Suite 510, Los Angeles, California 90024; telephone (213) 824–7456
510 Grain Exchange Building, Minneapolis, Minnesota 55415; telephone (612) 725–2025

Where multiple locations are involved in a system notice, the notice merely identifies the offices and refers to this introductory section for each address. In the system notice, the Washington office is referred to as the "principal office," the Chicago, Kansas City, New York and Los Angeles offices as the "regional offices."

Records within a system will not always be available at each of the offices listed in the system notice. For example, case files are basically maintained in the office where the investigation is being conducted, but certain information may be maintained in other offices as well. Similarly, many but not necessarily all employee records are maintained in the particular office where the employee works. In addition, the Commission's computers are physically located in Chicago, North Carolina, and in the Washington, D.C., headquarters office, although information in computer printout form may be available in any office.

The Commission has undertaken the responsibility, unless otherwise specified in the system notice, to determine where the particular records being sought are located. However, if the individual seeking the records in fact knows the location, it would be helpful to the Commission if he would indicate that location.

Scope and Content of Systems of Records

The Privacy Act applies to personal information about individuals. Personal information subject to the provisions of the Privacy Act may sometimes be found in a system of records that might appear to relate solely to commercial matters. For example, the system of records entitled "registration of futures commission merchants"[3] contains essentially business information. However, the application for registration contains a few items of personal information concerning key personnel of the registrant firm. Since the capability exists$through the Commission's computer to retrieve information from this system of records not only by use of the name of the futures commission merchant but also by the use of the name of these individuals this information is within the purview of the Privacy Act.[4]

Such a capability would generally not exist, however, in a Commission staff investigation of the activities of the futures commission merchant. Thus, if the investigation were opened under the name of the futures commission merchant, information would be retrievable only under that name. Accordingly, information about principals of a firm under investigation would generally not be retrievable by the name of the individual, and the provisions of the Privacy Act would not apply.

General Statement of Routine Uses

A principal purpose of the Privacy Act is to restrict the unauthorized dissemination of personal information concerning an individual. In this connection, the Privacy Act and the Commission's rules prohibit all dissemination except for specific purposes.[5]

The Privacy Act and the rules specifically provide that disclosure may be made with the written consent of the individual to whom the record pertains. Disclosure may also be made to those officers and employees of the Commission who need the record in the performance of their duties. In addition, disclosures are authorized if they are made pursuant to the terms of the Freedom of Information Act, 5 U.S.C. 552.

In addition, the Privacy Act and the Commission's rules permit disclosure of individual records if it is for a "routine use," which is defined as a use of a record which is compatible with the purpose for which it was collected. The system notice for each system of records is required to list each of these routine uses.

Many of the routine uses of Commission records are applicable to a number of systems. These include the following:

1. The information in the system may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any other action or proceeding in which the Commission or any member of the Commission or its staff participates as a party or the Commission participates as

[2] Two systems of records, one relating to investigatory material compiled for law enforcement purposes and the other relating to confidential information obtained during employee background investigations, have been exempted in the Commission's rules from certain requirements of the Privacy Act, as authorized under the Privacy Act, 5 U.S.C. 552a(k). Among the requirements from which these systems have been exempted is the requirement that the information listed under items (9) and (10) above be furnished.

[3] A futures commission merchant is someone engaged in soliciting or accepting orders for the purchase or sale of commodity futures in the manner defined in Section 2(a)(1) of the Commodity Exchange Act, 7 U.S.C. 2.

[4] See the definition of system of records in the Privacy Act, 5 U.S.C. 552a(a)(5), and § 146.2(g) of the Commission's Privacy Act rules, 17 CFR 146.2(g).

[5] Individuals should refer to the full text of the Privacy Act, 5 U.S.C. 552a(b), and to the Commission's rules for a complete list of authorized disclosures. Only those arising most frequently have been mentioned herein.

amicus curiae, and may be disclosed in response to a subpoena issued in the course of a proceeding to which the Commission is not a party.

2. The information may be given to the Justice Department, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other federal, state or local law enforcement or regulatory agencies for use in meeting responsibilities assigned to them under the law, or made available to any member of Congress who is acting in his capacity as a member of Congress.

3. The information may be given to any board of trade designated as a contract market by the Commission if the Commission has reason to believe this will assist the contract market in carrying out its responsibilities under the Commodity Exchange Act, 7 U.S.C. 1, et seq., and may be given to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq.[6]

4. At the discretion of the Commission staff, the information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein, and those matters appear relevant to the subject of the investigation.

5. The information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under Section 8 of the Commodity Exchange Act, 7 U.S.C. 12; Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business information developed during an investigation. In certain contexts some of this information might be considered personal in nature.

6. The information may be disclosed to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. The information may be disclosed to a prospective employer in response to its request in connection with the hiring or retention of an employee, to the extent that the information is believed to be relevant to the propective employer's decision in the matter.

8. The information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of that Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with "any person."

To avoid unnecessary repetition of these routine uses, where they are generally applicable the system notice refers the reader to the above description. Unless otherwise indicated, where the system notice contains a reference to the foregoing routine uses, all of the eight routine uses listed above apply to that system.

System Notices

The Commission's systems of records are set forth below.[7] This notice includes, of course, particular changes which have occurred during this reporting period.

Index

CFTC–1

SYSTEM NAME:

Matter register and Matter Indices.

SYSTEM LOCATION:

Commission's principal and regional offices. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons found or alleged to have, or suspected of having violated the Commodity Exchange Act or the rules and regulations or orders of the Commission adopted thereunder.

b. Persons lodging complaints with the Commission.

c. Agency referrals.

CATEGORIES OF RECORDS IN THE SYSTEM:

An index system to CFTC–14 Matter Files and CFTC–16 Case Files, including:

a. The matter register. A file number is assigned to each case and the record is filed according to that number. The register also indicates the date opened, the disposition and status, the date closed, and the staff member assigned.

b. The matter register also includes reports recommending opening and closing of investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8 of the Commodity Exchange Act, 7 U.S.C. 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, in looseleaf binders, or on index cards.

RETRIEVABILITY:

By name of investigation.

SAFEGUARDS:

Secured rooms or secured premises with access limited to those whose official duties require access. In appropriate cases the records are maintained in lockable file cabinets.

RETENTION AND DISPOSAL:

Destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement in the Commission's principal office and

[6] A proposal to amend this routine use is now pending before the Commission. The proposal would provide that information contained in any of the Commission's systems of records may be given to a futures association registered with the Commission pursuant to Section 17 of the Commodity Exchange Act (7 U.S.C. 21) if the Commission has reason to believe that such disclosure will assist the association in carrying out its responsibility under the Act. See 47 FR 33530 (Aug. 3, 1982).

[7] The Commission's previous system of records notice contained only that information necessary to update its previous notices. See 46 FR 45981 (Sept. 16, 1981). For convenience this notice sets forth complete information about each of the Commission's systems of records.

Regional Counsel of each regional office. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

Persons submitting complaints to the Commission, and miscellaneous sources including customers, law enforcement and regulatory agencies, commodity exchanges, trade sources, and Commission staff generated items.

CFTC–2

SYSTEM NAME:

Corresondence Files.

SYSTEM LOCATION:

Commission's principal offices at 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons corresponding with the Commission, directly or through their representatives. Persons discussed in correspondence to or from the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence and indices of correspondence, and certain internal reports and memoranda related to the correspondence.

This system includes only those records which are part of a general correspondence file maintained by the office involved. It includes correspondence indexed by subject matter, date or assigned number unless there is a corresponding index capability by individual name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, in looseleaf binders, or on index cards.

RETRIEVABILITY:

By name, subject and case. This may be either the name of the person who sent or received the letter, or the person on whose behalf the letter was sent or received. It may also be another person who was the principal subject of the letter, where circumstances appear to justify this treatment. See previous discussion concerning the category of records maintained in this system.

SAFEGUARDS:

Secured rooms or on secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained indefinitely depending on the policies and practices of the offices involved.

SYSTEM MANAGER(S) AND ADDRESS:

The General Counsel; Director, Office of Public Information; Director, Division of Enforcement; and the Office of the Secretariat. All are located at 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382. Specify the system manager, if known.

RECORD SOURCE CATEGORIES:

Persons corresponding with the Commission and correspondence and memoranda prepared by the Commission.

CFTC–3

SYSTEM NAME:

Docket Files.

SYSTEM LOCATION:

Hearing Clerk's office, 2000 L Street, N.W., Suite 620, Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons involved in any CFTC proceeding.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pleadings, motions, applications, stipulations, affidavits, transcripts and documents introduced as evidence, briefs, orders, findings, opinions, and other matters which are part of the record of an administrative proceeding. They also include related correspondence and indices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commission is authorized or required to conduct hearings under several provisions of the Commodity Exchange Act. These files are a necessary concomitant for the conduct of orderly hearings. See also 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Public records unless the Commission or assigned presiding officer determines for good cause to treat as non-public consistent with the provisions of the Freedom of Information Act. Non-public portions may be used for any purpose specifically authorized by the presiding officer who ordered non-public treatment or by the Commission.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By the docket number and cross-indexed by complainant and respondent names.

SAFEGUARDS:

Only items which the Commission or the presiding officer has directed be kept non-public are segregated and precautions are taken as to these items to assure that access is restricted to authorized personnel only.

RETENTION AND DISPOSAL:

Maintained in the Hearings Section until disposition by the presiding officer, and then forwarded to the Hearings Clerk's office for filing.

SYSTEM MANAGER(S) AND ADDRESS:

Hearing Clerk, Hearing Clerk's office, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or

contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

Commission staff members; opposing parties and their attorneys; proceeding witnesses; and miscellaneous sources.

CFTC–4

SYSTEM NAME:

Employee Leave, Time and Attendance.

SYSTEM LOCATION:

Commission's principal office, 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various records reflecting CFTC employees time and attendance and leave status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6301–6323; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department or other federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of any federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or on index cards.

RETRIEVABILITY:

By the name of the employee or by the employee number, cross-indexed by name.

SAFEGUARDS:

Locked cabinets.

RETENTION AND DISPOSAL:

Three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Budget and Accounting Officer, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC–5

SYSTEM NAME:

Employee Personnel Records.

SYSTEM LOCATION:

Personnel Section at 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records maintained in the principal office for all employees include: a. Forms required and records maintained under the Commission's rules of conduct and the Ethics in Government Act; b. Pre-employment inquiries not included with "exempted employee background investigation materials"; c. Various summary materials received in computer printout form; d. Card indices reflecting various information contained in other personnel records.

The official personnel records maintained by the Commission are described in the system notices published by the Office of Personnel Management, and are not included within this system.,

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 5 U.S.C. APP. (Personnel Financial Disclosure Requirements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department, the Office of Personnel Management or other federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on index cards.

RETRIEVABILITY:

By the name of the employee.

SAFEGUARDS:

Lockable cabinets.

RETENTION AND DISPOSAL:

Maintained in the current file until the employee is terminated or separated, retained for 2 years thereafter, and then destroyed, except for those maintained under the Commission's rules of conduct and the Ethics in Government Act which are maintained until no longer needed or required under applicable law and regulation.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer of the Commission, except for records maintained under the Commission's rules of conduct and the Ethics in Government Act, for which the General Counsel is the system manager. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOE, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORITS:

Individual on whom the record is maintained; personnel office records; and miscellaneous sources.

CFTC-6

SYSTEM NAME:

Employee Travel Records.

SYSTEM LOCATION:

Commission's principal office, 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission member, employee, witness, expert or any member of an Advisory Committee who travels on official business for the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, address, destination, itinerary, mode and purpose of travel, dates, expenses, amounts advanced, amounts claimed, and amounts reimbursed. Includes travel authorizations, travel vouchers, copies of government transportation requests, receipts and other records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information may be provided to the Justice Department or other federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By the name of the member, employee, witness, expert and member of the Advisory Committee.

SAFEGUARDS:

Lockable cabinets.

RETENTION AND DISPOSAL:

Three years and then destroyed.

SYSTEM MANAGER(S) ADDRESS:

Budget and Accounting Officer, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC-7

SYSTEM NAME:

Employee records maintained by the office of ADP Services.

SYSTEM LOCATION:

Commission's principal office, 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. General records relating to the employee including information from the notification of personnel action (SF-50) and other related sources, employee name, social security or other employee number, birth date, veteran's preference, tenure, leave group, insurance coverage, retirement coverage, type of employment, date service commenced and ended, grade and step, base salary, duty station, various computation dates, leave codes and status, employing office and other miscellaneous information.

b. Payroll related information for CFTC employees, including payroll and leave data for each employee relating to rate and amount of pay, leave, and hours worked, and leave balances, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, mailing addresses and home addresses, including copies of the CFTC time and attendance reports as well as authorizations relatin to deductions.

c. Travel vouchers and related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records is transmitted to the U.S. Treasury to effect reimbursement of travel expenses and issuance of paychecks, as well as distribution of pay to other sources according to employee instructions. Appropriate information from these records is also forwarded to taxing authorities and others receiving proceeds from the employee's pay.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic disc.

RETRIEVABILITY:

By social security number or equivalent employee number and by name of employee.

SAFEGUARDS:

Access limited to the offices where the records are maintained. Certain records are kept in lockable file cabinets and safes.

RETENTION AND DISPOSAL:

Three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Operations and Budget Section, 2033 K street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC-8

SYSTEM NAME:

Employment Applications.

SYSTEM LOCATION:

Personnel Section at 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions with the CFTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the application from (SF-171) and/or the resume of the applicant.

AUTHORITY FOR MAINTENANCE OR THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about these records is used in making inquiries concerning the qualifications of the applicant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By occupational interest.

SAFEGUARDS:

Lockable cabinets.

RETENTION AND DISPOSAL:

Two years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer of the Commission, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC–9

SYSTEM NAME:

Exempted Employee Background Investigation Material.

SYSTEM LOCATION:

Personnel Section at 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and prospective employees of CFTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for CFTC employment obtained under an express promise that the identity of the source would be held in confidence, or which were obtained prior to September 28, 1975, under an implied promise of confidentiality.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 5 U.S.C. 552a(k)(5).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses" except the general routine use number (3) is not applicable. Disclosure pursuant to the other routine uses may be subject to the consent of the person furnishing the information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By employee name.

SAFEGUARDS:

Lockable cabinets in secured offices or buildings.

RETENTION AND DISPOSAL:

Three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Officer, 2033 K Street, N.W., Washington, D.C. 20581.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(5), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, record access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of records in the system be described.

CFTC–10

SYSTEM NAME:

Exempted Investigation Records.

SYSTEM LOCATION:

Commission's principal and regional offices. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals whom the staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

b. Individuals whom the staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals involved in investigations authorized by the Commission concerning the activities of members of the Commission or its employees based upon formal complaint or otherwise.

d. Individuals filing applications with the Commission for their own registration or registration of a firm.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory materials compiled for law enforcement purposes whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's regulatory and enforcement program, or compromise Commission investigations; may include all or any part of the records developed during the investigation or inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8 of the Commodity Exchange Act, 7 U.S.C. 12; 44 U.S.C. 3101; 5 U.S.C. 552a(k)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses" except that general routine use number (5) is not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By assigned case number or case title. Cases filed by number are cross-indexed by case title.

SAFEGUARDS:

In addition to normal office and building security, certain of these records are maintained in locked file cabinets. All employees are aware of the sensitive nature of the information gathered during investigations.

RETENTION AND DISPOSAL:

Maintained until exemption is no longer necessary, then returned to the appropriate non-exempt system.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement, except for those records maintained under the Commission's rules of conduct and the ethics in Government Act, for which the General Counsel is the system manager. See introduction "The Location of Systems of Records."

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2) and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of records in the system be described.

CFTC–11

Incorporated into CFTC–20.

CFTC–12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Division of Trading and Markets at 2033 K Street, N.W., Washington, D.C. 20581. Limited records are located in the Chicago regional office, 233 South Wacker Drive, 46th floor, Chicago, Illinois 60606.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply to the Commission for registration as an associated person or as a floor broker, principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes copies of applications for registration, (Form 7–R) and biographical supplements (Form 8–R), fingerprint cards, and correspondence, reports and memoranda reflecting information developed from sources outside the agency. In addition, the system contains records of each CFTC fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4n(6) and 8a(2)(B) of the Commodity Exchange Act, 7 U.S.C. 6n(6) and 12a(2)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses." Information in this system of records may also be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computer tapes.

RETRIEVABILITY:

Firm or individual name.

SAFEGUARDS:

Locked cabinets.

RETENTION AND DISPOSAL:

Applications for registration (Forms 7–R and 8–R) and biographical supplements (Form 8–R), and related documents and correspondence are maintained on the premises for three years after the individual's registration, or that of the firm with which the individual is affiliated as a principal, becomes inactive. Records are then held in the Federal Records Center for seven years before being destroyed. Computer records are maintained permanently on the premises and updated periodically as long as the individual remains registered or affiliated with a registrant as a principal. Computer records on persons who may apply may be maintained indefinitely. Computer printouts are maintained on the premises for six months and then destroyed. Microfiche records are maintained permanenty on the premises.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Director, Registration Unit, in the Commission's principal office and the Chief, Registration Branch, in the Commission's Chicago regional office. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained, his employer, federal, state, and local regulatory and law enforcement agencies, commodity and securities exchanges, National Futures Association, National Association of Securities Dealers, and miscellaneous sources.

CFTC–13

SYSTEM NAME:

Interpretation Files

SYSTEM LOCATION:

Office of the General Counsel and Office of Public Information, 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested the Office of the General Counsel to provide them with its interpretation of provisions of the Commodity Exchange Act or various rules and regulations adopted by the Commission. The requests may have been made directly by the individual, or through the individual's attorney or other representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interpretation letters furnished, the request for an interpretation, and any related internal memoranda and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 2(a)(4) of the Commodity Exchange Act, 7 U.S.C. 4a(c); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Interpretation letters and the related requests for interpretation which discuss matters of general applicability may be made public and may be published by the Commission, or the Commission may otherwise make information public concerning matters raised therein. However, portions of such letters or information will be deleted or omitted to the extent necessary to prevent a clearly unwarranted invasion of personal privacy or to the extent they otherwise contain material considered nonpublic under the Freedom of Information Act and the Commission's rules implementing that Act.

b. Information in these files may be used as a reference in responding to later inquiries from the same party or in following up on earlier correspondence involving the same person.

c. Also see introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By futures commission merchant, floor broker, commodity pool operator, commodity trading advisor or associated person name if the request is made by them or on their behalf. If it is made on behalf or another individual it will be filed by the name of the individual. If the identity of these persons is not known, the record will be maintained in the name of the attorney or other representative filing the request.

SAFEGUARDS:

Access limited to the offices where the records are maintained.

RETENTION AND DISPOSAL:

Maintain permanently (on premises for 5 years, then transferred to the Federal Records Center). After 20 years, offered to the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

The General Counsel, and the Director, Office of Public Information in the Commission's principal office. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

Persons corresponding with the Commission and correspondence and memoranda prepared by the Commission.

CFTC–14

SYSTEM NAME:

Matter Files.

SYSTEM LOCATION:

Commission's principal and regional offices. Pending investigations files may be located in whatever office is conducting the investigation. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals whom the staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations, and orders promulgated thereunder, or the rules and regulations of any board of trade designated as a contract market.

b. Individuals whom the staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations, and orders promulagated thereunder, or the rules and regulations of any board of trade designated as a contract market.

c. Individuals involved in investigations authorized by the Commission concerning the activities of members of the Commission or its employees based upon formal complaint or otherwise.

d. Individuals filing an application for registration as associated person or floor broker Form 8–R (biographical information questionnaire) in connection with an application for registration with the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Anything obtained during the course of an investigation including data from Commission reporting forms, account statements, and other trading records, exchange records, bank records, and credit information, business records, reports of interviews, transcripts of testimony, exhibits to transcripts, affidavits, statements by witnesses, contracts and agreements. Also contains internal memorada, reports of investigation, subpoenas, warning letters, stipulations of compliance, correspondence and other miscellaneous matters. The nature of the personal information contained in these files varies according to what is considered relevant by the attorney assigned based on the circumstances of the particular case under investigation, and may include personal background information about the individual involved, his education and employment history, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individual's activities during the period in question.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8 of the Commodity Exchange Act, 7 U.S.C. 12; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses." Information concerning traders and their activities may be disclosed and made public by the Commission to the extent permitted by law when deemed appropriate to further the practices and policies of the Commodity Exchange Act. Information collected during an investigation may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under Section 8 of the Commodity Exchange Act, 7 U.S.C. 12.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By assigned case number or case title. Matter cases are filed by number and cross-indexed by matter title.

SAFEGUARDS:

In addition to normal office and building security, certain of these records are maintained in locked file cabinets. All employees are aware of the sensitive nature of the information gathered during investigations.

RETENTION AND DISPOSAL:

Regional office records are maintained on the premises for 5 years, then sent to the Federal Records Center for 5 years, before being destroyed. The records in the Office of the General Counsel are generally maintained until the investigation is closed and any action arising therefrom has been completed, including all review at the appellate level. Thereafter, certain basic information may be retained and sent to the Federal Records Center, while the remaining information is either returned to the person from whom it was obtained or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement in the Commission's principal office. Regional Counsel of the region where the investigation is being conducted. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street,

N.W., Washington, D.C., 20581. Telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

a. Reporting forms and other information filed with the Commission; b. boards of trade; c. futures commission merchants, commodity trading advisors, commodity pool operators, floor brokers; d. federal, state and local regulatory and law enforcement agencies; e. banks, credit organizations and other institutions; f. corporations; g. individuals having knowledge of the facts; h. attorneys; i. publications; j. courts; and k. miscellaneous sources.

CFTC-15

SYSTEM NAME:

Large Trader Report Files.

SYSTEM LOCATION:

Copies of original reports and related correspondence in CFTC office where filed. See further description below. Ancillary records and information (computer printout) may be located in any CFTC office. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals holding reportable positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Reports filed by the individual holding the reportable position:

a. Statements of Reporting Trader (CFTC Form 40). Contains information described in Part 18 of the Commission's rules and regulations, including the name, address, number, and principal occupation of the reporting trader, financial interest in and control of commodity futures accounts, and information about the traders business associations;

b. Large trader reporting form (Series 03 Form). Contains information described in Part 18 of the Commission's rules and regulations, including the traders identifying number, previous open contracts, trades and deliveries that day, open contracts at the end of the day, and classification as to speculation or hedging;

c. Large trader reporting form (Series 04 Form). Contains information described in Part 19 of the Commission's rules and regulations, to be filed by merchants, processors and dealers in commodities which have federally imposed speculative position limits. Includes trader's identifying number, stocks owned, fixed price sale and purchase commitments. These reports are filed in the CFTC office in the city where the reporting trader is located. If there is no CFTC office in that city, the reports are filed according to specific instructions of the CFTC.

2. Reports to be filed by futures commission merchants, members of contract markets, foreign brokers and for large option traders by contract markets.

a. Identification of "Special Accounts" (CFTC Form 102). Contains material described in Part 17 of the Commission's rules and regulations. Includes the name, address, and occupation of a customer whose accounts have reached the reporting level.

Also includes the account number which the futures commission merchants uses to identify this customer on the firm's 01 report (see next paragraph), and whether the customer has control of or financial interest in accounts of other traders.

b. Large trader reporting form (Series 01 Form). Contains material described in Part 17 of the Commission's rules and regulations, for each "special account." Shows customer account number, reportable position held in each commodity future and information concerning deliveries and exchanges of futures for physicals by persons with reportable positions. These reports are filed in the CFTC office in the city where the contract market involved is located. If there is no CFTC office in that city, they are filed in the office where the CFTC instructs that they be filed.

3. Computer records prepared from information on the forms described in items (1) and (2) above. The computer system is located in Chicago and North Carolina. Printouts may be located in some or all of the Commission's offices.

4. Correspondence and memoranda of telephone conversations between the Commission and the individual or between the Commission and other agencies dealing with matters of official business concerning the individual.

5. Other miscellaneous information, including intra-agency correspondence and memoranda concerning the individual and documents relating to official actions taken by the Commission against the individual.

6. Reports from contract markets concerning futures and options:

(a) Positions and Transactions of Clearing Member Firms. Information is provided in machine readable form and contains the data prescribed in Section 16, of the Commission's regulations. The information includes an identification number for each clearing member, open contracts at the firm for proprietary and customer accounts and transactions such as trades, exchanges of futures for cash, delivery notices issued and received, and transfers and option exercises. The information filed in the city where the exchange is located or as instructed by the Commission. Data is transmitted to the CFTC computer system and printouts are available at all CFTC offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(b) Large Option Trader Data. Information is provided in machine readable form and contains the data prescribed in Commission Rule 16.02. Shows customer account number and reportable options positions as specified in Rule 16.02. Machine readable media is delivered to the Commission office in which the contract market is located or as instructed by the Commission. The data is transmitted to the CFTC computer system and printouts of the data are available in each Commission office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4g, 4i, and 8 of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information concerning traders and their activities may be disclosed and made public by the Commission to the extent permitted by law when deemed appropriate to further the practices and policies of the Commodity Exchange Act. Also see introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, and computer printout.

RETRIEVABILITY:

Form 40, Form 102, correspondence and other miscellaneous information are maintained directly under the name of the reporting trader. The Series 01, 03, and 04 forms are maintained by identifying code number. However, information from these forms is included in the computer and retrievable by individual name from the computer.

SAFEGUARDS:

General office security measures, with recent trading reports stored in lockable file cabinets. Access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

CFIC Form 40, CFTC Form 102, correspondence, memoranda, etc. are

retained on the premises until the account has been inactive for 10 years and then destroyed. Form 01, 03 and 04 reports are maintained for 2 years on the premises and then held at the Federal Records Center for 3 years before being destroyed. The computer file is maintained for 10 years for Form 01, 03, 04 reports and large trader options data reported by contract markets. Clearing member positions and transactions are maintained for five years. Trader code numbers and related information are maintained for ten years after a trader becomes nonreportable. Account numbers assigned by an FCM are maintained on the system for five years after the account is no longer reported.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, in the region where the records are located. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382. Include code number assigned by the Commission for filing reports, the name of the futures commission merchant through whom traded, and the time period for which information is sought.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and futures commission merchants through whom the individual trades. Correspondence and memoranda prepared by the Commission or its staff. Correspondence from firms, agencies, or individuals requested to provide information on the individual.

CFTC–16

SYSTEM NAME:

Case Files.

SYSTEM LOCATION:

Commission's principal and regional offices. Pending litigation files may be located in other participating offices. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons or firms against whom the Commission has taken enforcement action based on violations of the Commodity Exchange Act or the rules and regulations promulgated thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of various papers filed by or with the Commission or the courts in connection with administrative proceedings or injunctive actions brought by the Commission. It includes, as a minimum, a copy of the complaint and the final decision and order, and may contain other documents as well.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These files are necessary for the orderly and effective conduct of litigation authorized under the Commodity Exchange Act and other federal statutes. See e.g., Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–1, authorizing injunctive actions, and various provisions in that Act authorizing administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is generally a matter of public record and may be disclosed without restriction. Also see introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or binders.

RETRIEVABILITY:

By case title.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained indefinitely, although after action is complete usually reduced to only the complaint, final decision, and order.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement at the Commission's principal office and Regional Counsel for the region where the records are located. See introduction, "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The parties, their attorneys, the Commission's Hearings Section, the relevant court, and miscellaneous sources.

CFTC–17

SYSTEM NAME:

Litigation Files—OGC.

SYSTEM LOCATION:

Office of the General Counsel at 2033 K Street, N.W., Washington, D.C. 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties involved in litigation with the Commission or litigation in which the Commission has an interest including, but not limited to:

a. Administrative proceedings before the Commission;

b. Injunctive actions brought by the Commission;

c. Other federal court cases to which the Commission is a party;

d. Litigation in which the Commission is participating as amicus curiae;

e. Other cases involving issues of concern to the Commission, including those brought by other law enforcement and regulatory agencies and those brought by private parties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Papers comprising or included in the record of the case, and briefs and correspondence related to that action. May also include internal memoranda and other documents pertaining to the matter being litigated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commodity Exchange Act, 7 U.S.C. 1 et seq., entrusts the Commission with broad regulatory responsibilities over commodity futures transactions. In this connection, the Commission is authorized to bring both administrative proceedings and injunctive actions where there appear to have been violations of the Act. Furthermore, to

effectuate the purposes of the Act, it is necessary that the Commission staff be familiar with developments in others actions brought by other which have implications in the commodity law areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is generally a matter of public record and may be disclosed without restriction. Also see introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by caption of the case.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained in the active files until the action is completed, including final review at the appellate level. Thereafter, transferred to the inactive case files, where a skeletal record of pleadings, briefs, findings and opinions and other particularly relevant papers may be maintained. These records are maintained on premises for five years, then transferred to the Federal Records Center. Other materials are generally destroyed except insofar as a copy of some of the documents may be kept in precedent files for use in later legal research or preparation of filings in other matters.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, 2033 K Street, N.W., Washington, D.C. 29581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N. W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The court or regulatory authority before whom the action is pending, the attorneys for one of the named parties, and miscellaneous sources.

CFTC–18

SYSTEM NAME:

Logbook on Speculative Limit Violations.

SYSTEM LOCATION:

Commission's Chicago and New York regional offices. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have exceeded speculative limits in a particular fiscal year.

CATEGORIES OF RECORDS IN THE SYSTEM:

A listing, by year, of the violations of speculative limits imposed by the Commission and the exchanges. It includes the trader's assigned code number, the commodity involved, the name of the trader, the type of violation, the date of violation, the date the violation ceased, and the action taken. Copies of warning letters and replies pertaining to the violations listed are maintained with the logbook.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4i and 8 of the Commodity Exchange Act, 7 U.S.C. 6i and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year, and within each year by the name of the violator.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for 5 years, then held in Federal Records Center for 15 years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606; Chief, Surveillance Branch, One World Trade Center, Suite 4747, New York 10048.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C., 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

Series 03 reports filed by traders. Correspondence prepared by the Commission or by the individual or individual's representative.

CFTC–19

SYSTEM NAME:

Petitions and Rulings.

SYSTEM LOCATION:

Complaints Section, Hearing Clerk's office, at 2000 L Street, N.W., Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons named in an Application for Institution of a Proceeding before the CFTC or its predecessors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The application and supporting documentation of the person submitting the application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are ancillary to the Commission's authority to institute administrative proceedings. See also 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "Gerneral Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By number and application caption. Generally, the caption will be the name of complainant and name of a firm, organization, or person against whom the applicant complains.

SAFEGUARDS:

Access limited to the office where the record is maintained.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Hearing Clerk, Hearing Clerk's office, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

Persons submitting an Application for Institution of a proceeding.

SYSTEM NAME:

Registration of Futures Commission Merchants, Floor Brokers, Associated Persons, Commodity Trading Avisors and Commodity Pool Operators.

CFTC–20

SYSTEM LOCATION:

Chicago office (primary files). All CFTC offices have summary information (microfiche records). See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied to the Commission for registration as an associated person or as a floor broker and principals (as defined in 17 CFR 3.1) of futures commission merchants, commodity trading advisors and commodity pool operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system includes applications for registration (Forms 7–R, 8–R and 8–S) and biographical supplements (Form 8–R), schedules and supplementary attachments to those Forms, fingerprint cards, Notices of Termination (Form 8–T), correspondence relating to registration between the Commission and the applicant, registrant or principal, and reports reflecting information developed from sources outside the agency. A computerized system, consisting primarily of information taken from the registration forms is maintained by the Chicago office. The computer records include the name, date and place of birth, social security number (optional), exchange membership (floor brokers only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, and principal. The computer records also include information relating to name, trade name, principal office address, records address, names of principals, branch office managers and agents of futures commission merchants, and names of advisory services forcommodity trading advisors and pools for commodity pool operators.

Monthly microfiche records list the name, business address, and exchange membership affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These microfiche records as well as non-confidential portions of applications for registration and biographical supplements are considered to be public records and are available to any person for inspection and copying. Auxiliary records, such as card indices, are maintained which summarize information contained in the system regarding each associated person, floor broker and principal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(1), 4k(2), 4n(1), 8a(1) and 8a(2) of the Commodity Exchange Act, 7 U.S.C. 6f(1), 6k(2), 6n(1), 12a(1) and 12a(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses." Information contained in this system of records also may be disclosed in connection with the certification by a futures commission merchant of an application for registration of an associated person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer printouts, index cards, computer memory, and microfiche.

RETRIEVABILITY:

By the name of the individual or firm. Where applicable, the computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, commodity trading advisor or commodity pool operator with whom the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises and in appropriate cases, lockable file cabinets, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Applications (Forms 7–R, 8–, and 8–S) and biographical supplements (Form 8–R), related documents and correspondence are maintained on the premises for three years after the individual's registration, or that of the firm with which the individual is affiliated as a principal, becomes inactive. Records are then held in the Federal Records Center for seven years before being destroyed. The computer records are maintained permanently on the premises and updated periodically as long as the individual remains registered or affiliated with a registrant as a principal. Computer printouts are maintained on the premises for six months and then destroyed. Microfiche records are maintained permanently on the premises.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Registration Branch, 233 South Wacker Drive, 46th Floor, Chicago, Illinois 60606.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington D.C. 20581. Telephone (202) 254–3382.

RECORD SOURCE CATEGORIES:

The individual on whom the file is maintained, individual's employer, the commodity and securities exchanges, other government agencies, self-regulatory organizations and persons with relevant knowledge about the individual. The computer record is prepared from the application or biographical supplement and from information developed during the fitness inquiry.

CFTC-21

Removed—Incorporated into CFTC-20.

CFTC-22

Removed—Incorporated into CFTC-20.

CFTC-23

Removed—Incorporated into CFTC-20.

CFTC-24

Removed—Incorporated into CFTC-20.

CFTC-25

Removed.

CFTC-26

Removed—Incorporated into CFTC-14.

CFTC-27

Removed.

CFTC-28

SYSTEMS NAME:

Exchange Disciplinary Action File.

SYSTEM LOCATION:

Records in this system are maintained at the Commission's principal and regional offices. See introduction, "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been suspended, expelled, or disciplined, or denied access to or by an exchange.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters of notification of disciplinary or other adverse action taken by an exchange which include the name of the person against whom such action was taken, the action taken and the reasons therefor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8c(1)(B) of the Commodity Exchange Act, 7 U.S.C. 12c(1)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Looseleaf binders.

RETRIEVABILITY:

By chronological order according to the exchange which took the disciplinary or other adverse action which is the subject of the notice.

SAFEGUARDS:

General office security measures.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Contract Markets Section, at 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. Telephone (202) 254-3382.

RECORD SOURCE CATEGORIES:

Exchanges notifying the Commission of disciplinary or other adverse actions taken.

CFTC-29

SYSTEM NAME:

Reparations Complaints.

SYSTEM LOCATION:

Complaints Section, 2000 L Street, N.W., Washington, D.C. 20036.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing customer reparations complaints, as well as the firms and individuals named in the complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reparation complaints, answers and correspondence filed with the Complaints Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 14 of the Commodity Exchange Act, 7 U.S.C. 18.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used in the conduct of the Commission's reparations program. Also see introduction, "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By number and cross-indexed by the name of the complainant and respondent.

SAFEGUARDS:

General office security including secured rooms or premises, and in appropriate cases lockable file cabinets, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained indefinitely, but when a case is forwarded to the Hearings Section these records are included in the Commission's docket files.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Complaints Section, 2033 K Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 254-3382.

RECORD SOURCE CATEGORIES:

Persons filing reparation complaints or answers.

Issued by the Commission in Washington, D.C. on September 29, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-27289 Filed 10-1-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board will meet in general session in the IDA Conference Room, 400 Army Navy Drive, Arlington, VA on October 27–28, 1982. The purpose of the meeting is to receive background briefings from National, DOD and Air Force leaders on policy, plans and programs for Air Force activities in Space and to review results of SAB studies on Airlift and Advanced Electronics. The meetings will convene at 8:00 a.m. on both days and adjourn at 5:00 p.m. on October 27, 1982 and at 4:30 p.m. on October 28, 1982.

The meeting concerns matters listed in Section 522b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly, the meetings will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

September 16, 1982.

[FR Doc. 82-27194 Filed 10-1-82; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Electronic Security Command (ESC) Advisory Group will meet at HQ ESC, Kelly AFB, TX on October 20–21, 1982 from 8:00 a.m. to 5:00 p.m. both days. The group will receive briefings on Command and Control Technology Applications to Military Offensive and Defensive Operations.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

September 16, 1982.

[FR Doc. 82-27195 Filed 10-1-82; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Air Force Technical Applications Center (AFTAC) Technologies meeting published in the Federal Register, Volume 47, No. 150, Wednesday, August 4, 1982 has been postponed until 16–17 November 1982. All other information remains the same.

For further information contact the Scientific Advisory Board Secretariat at 202–697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-27196 Filed 10-1-82; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Air-Air Missile Requirements will meet at Kirtland AFB, NM on October 22, 1982. The purpose of the meeting will be to review final report drafts and construct recommendations. The meeting will convene at 8:30 a.m. and adjourn at 1:00 p.m. that day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 697–4648.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

September 21, 1982.

[FR Doc. 82-27197 Filed 10-1-82; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Vision and Laser Bioeffects.

Date of meeting: 8 and 9 November 1982.

Time and place: 0830 hrs, US Army Aeromedical Research Laboratory, Ft. Rucker, Alabama.

Proposed Agenda: This meeting will be open to the public from 0830 to 1600 hrs on 8 November for the administrative review and discussion of the scientific research program of the Vision and Laser Bioeffects Group. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), US Code, Title 5 and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1615 to 1730 hrs on 8 November and from 0830 to 1630 on 9 November for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129 (415/561–4367), will furnish summary minutes, roster of Subcommittee members and substantive program information.

Dated: September 20, 1982.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 82-27160 Filed 10-1-82; 8:45 am]

BILLING CODE 3710-08-M

Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Trauma.

Date of meeting: 11 and 12 November 1982.

Time and place: 0830 hrs, Conference Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed agenda: This meeting will be open to the public from 0830 to 1300 hrs on 11 November for the administrative review and discussion of the scientific research program of the Trauma Group. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), U.S. Code, Title 5 and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1315 to 1700 hrs on 11 November and from 0830 to 1700 on 12 November for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items. The disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ryan Neville, Assistant Director Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129 (415/561-4367), will furnish summary minutes, roster of Subcommittee members and substantive program information.

Dated: September 20, 1982.

Harry G. Dangerfield,

Colonel, MC, Deputy Commander.

[FR Doc. 82-27161 Filed 10-1-82; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on Anti-Tactical Missiles (ATM), Phase II; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Anti-Tactical Missiles (ATM), will meet in closed session on 22 October 1982 in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 22 October 1982 the Defense Science Board Task Force on ATM will review the status of Soviet ATM systems and technology and will outline a final report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)). It has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: September 29, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 82-27264 Filed 10-1-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare (Future Systems Subgroup); Notice of Advisory Committee Meeting

The future Systems Subgroup of the Defense Science Board Task Force on Electronic Warfare will meet in closed session on 17-18 November 1982 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 17-18 November 1982 the Task Force will discuss the application of technology to future systems designed to improve U.S. Electronic Warfare capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)). It has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: September 28, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 82-27200 Filed 10-1-82; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Transition of Weapon Systems From Development to Production; Notice of Advisory Committee Meeting

The Defense Science Board Task Force on Transition of Weapon Systems from Development to Production will meet in closed session on 26 October 1982, at Defense Systems Management College, Building 202, Ft. Belvoir, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on 26 October 1982 the Task Force will review, evaluate, and make recommendations concerning ways to improve and accelerate the transition of weapon systems into production. They will also consider training emphasis and possibilities for improvement in the internal management process.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)) it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly these meetings will be closed to the public.

Dated: September 28, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service Department of Defense.

[FR Doc. 82-27201 Filed 10-1-82; 8:45 am]

BILLING CODE 3810-01-M

Medical Reimbursement Rates for Fiscal Year 1983

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) on September 20, 1982, issued the following memorandum to the Assistant Secretaries of the Army (IL&FM) and Air Force (FM), the Comptroller of the Navy, and the Director, OCHAMPUS:

Reimbursement rates for inpatient and outpatient medical care are established for Fiscal Year 1983 as follows:

	IMET [1]	Inter-agency [2]	Others
Per inpatient day:			
Burn Center, Brooke Army Hospital	$658	$1,188	$1,393
All other general medical and dental care	200	369	430
Per outpatient visit	19	35	40
Per FAA traffic controller examination		70	

[1] International Military Education and Training Students.
[2] Other Federal Agency-sponsored patients and Government civilian employees and their dependents outside the United States.

The charge for inpatient medical and dental care given to dependents of military personnel shall be $6.55 per day effective October 1, 1982.

Dated: September 28, 1982.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 82-27199 Filed 10-1-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-81-005; FC Case Nos. 55119-9193-01, 02, 03-12]

General Motors; Fuel Mixture Exemptions

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and proposed modification of an order granting permanent fuels mixture exemptions to General Motors Corporation, Shreveport Plant, Shreveport, Louisiana.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a

proceeding under 10 CFR Part 501, Subpart G to modify the permanent fuels mixture exemptions granted by Order to three major fuel burning installations (MFBI's), identified as boiler Nos. 1, 2 and 3, owned and operated by General Motors Corporation (GM) at its Shreveport, Louisiana Assembly Division Plant under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

Based upon its review of GM's August 4, 1982, modification request, ERA is proposing to modify the Order on the Basis of its determination that significantly changed circumstances as defined in 10 CFR § 501.102(b) exist with respect to the applicability of the original exemptions. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR § 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this Notice in the **Federal Register** (see **DATES** section, below). If no responses are received within the established period, the Order modification, as proposed, for each boiler shall become final upon the expiration of that period, without further action by ERA.

A detailed discussion of the Orders and GM's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written responses to ERA's proposed modificaton of the GM Order must be received no later than November 4, 1982.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA–093, 1000 Independence Avenue, SW., Washington, D.C. 20585. FC–55119–9193–01, 02, and 03–12 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–8162

Allan Stein, Esq. or Marya Rowan, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B–178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–2967

SUPPLEMENTARY INFORMATION: On June 15, 1981, ERA exempted, by Order, GM's Shreveport, Louisiana boiler Nos. 1, 2, and 3 from the prohibitions of section 202 of FUA, which prohibits the use of natural gas or petroleum as a primary energy source by certain MFBIs (46 FR 32329, June 22, 1981). Subject to the terms and conditions set forth in the Order, the permanent exemptions permitted the use of a fuels mixture of coal and natural gas, the latter in an amount not to exceed 25 percent of the total annual BTU heat input of the primary energy sources of the MFBIs. GM's exemption request was filed under the then effective 10 CFR 503.38 and was granted pursuant to section 212(d) of FUA.

By letter of August 4, 1982, GM requested that ERA modify the Order to delete the reporting requirement that GM must, pursuant to 10 CFR 503.38(g), annually file with ERA a certification that the amount of natural gas used in each boiler during the preceding year did not exceed 25 percent of the total annual BTU heat input of the primary energy sources of that MFBI.

GM based its request on the fact that since the issuance of the Order with its annual reporting requirement, DOE has eliminated from its requlations currently in effect, 10 CFR 503.38 (46 FR 59872, December 7, 1981) any reporting requirements for boilers granted a fuels mixture exemption.

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to modify the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G, (46 FR 59872, December 7, 1981). Based upon the information contained in GM's modification request and upon the record as a whole, ERA proposes:

(1) To find that the subsequent revision in the final rules published December 7, 1981, of 10 CFR 503.38, eliminating any reporting requirement from an order granting a permanent exemption for certain fuel mixtures containing natural gas or petroleum, constitutes significantly changed circumstances that warrant a modification of the Order, as provided by 10 CFR 501.102(b); and

(2) To modify the Order to delete therefrom the required annual filing of a certification that the amount of natural gas used in each boiler during the preceding year did not exceed 25 percent of the total annual Btu heat input of the primary enegy source of that MFBI.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order exempting GM Boiler Nos. 1, 2 and 3 from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days of the publication of this Notice in the **Federal Register.** If ERA receives no responses within the allotted period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C. September 27, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-27157 Filed 10-1-82; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-11-NG]

Natural Gas Imports; Northern Natural Gas Co., Division of InterNorth, Inc., Application to Amend Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of the receipt on August 9, 1982 of the application of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), to amend an import authorization to extend the term of such authorization by two years from October 31, 1987 to October 31, 1989 and to increase the import volumes above presently authorized levels. The natural gas would continue to be purchased from Consolidated Natural Gas Limited of Calgary, Alberta (Consolidated), Northern's supplier under its existing authorization.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed no later than 4:30 p.m. on November 4, 1982.

FOR FURTHER INFORMATION CONTACT:

Leonard B. Levine (Natural Gas Branch, Oil and Gas Imports Division), Economic Regulatory Administration, 12th & Pennsylvania Avenue, N.W., Room 6144, RG–631 Washington, D.C. 20461 (202) 633–9296

Sue D. Sheridan (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue, S.W., Forrestal Building, Room 6E–042 Washington, D.C. 20485 (202) 252–6667

SUPPLEMENTARY INFORMATION: On August 29, 1980, ERA issued DOE/ERA Opinion and Order No. 19 (ERA Docket No. 79–24–NG) authorizing Northern to import natural gas purchased from Consolidated. Northern was authorized to import, at a point near Emerson, Manitoba, up to 200,000 Mcf of natural gas per day and 73,000,000 Mcf per year from November 1, 1980 through October 31, 1981. The order further authorized Northern, for the term November 1, 1981 through October 31, 1987, to import up to 200,000 Mcf per day and up to 73,000,000 per year at Emerson, minus whatever volumes Northern might elect to import at a point near Monchy, Saskatchewan. Imports at Monchy were the subject of a separate authorization granted to Northern by the Federal Energy Regulatory Commission (FERC) pursuant to its jurisdiction over the Alaska Natural Gas Transportation System (ANGTS), in an order issued July 27, 1980 in FERC Docket No. CP80–22.

On May 13, 1982, Northern and Consolidated amended their gas sales agreement to extend the term of the original contract for a two-year period through October 31, 1989. The amendment also provides for an increase in the Daily Contract Quantity (DCQ) Consolidated will sell and deliver to Northern over the final five years of the Contract. According to the terms of the May 13, 1982 agreement, Consolidated will deliver a Daily Contract Quantity for Northern's account at the authorized export/import points as detailed in the following table:

	Contract year	Original authorized volumes (MMcf/d)	Additional volumes auth/Req'd (MMcf/d)	Total DCQ (MMcf/d)
At Emerson:				
From Nov. 1, 1980 to Oct. 31, 1981	1st	60	0	60
From Nov. 1, 1981 to Aug. 31, 1982	2d Pt. 1	200	0	200
From Sept. 1, 1981 to Oct. 31, 1982	2d Pt. 2	100	0	100
From Nov. 1, 1982 to Oct. 31, 1983	3d	100	0	100
From Nov. 1, 1983 to Oct. 31, 1984	4th	100	0	100
From Nov. 1, 1984 to Nov. 31, 1985	5th	75	25	100
From Nov. 1, 1985 to Oct. 31, 1986	6th	50	30	80
From Nov. 1, 1986 to Oct. 31, 1987	7th	25	42.5	67.5
From Nov. 1, 1987 to Oct. 31, 1988	8th	0	67.5	67.5
From Nov. 1, 1988 to Oct. 31, 1989	9th	0	67.5	67.5
At Monchy:				
From Nov. 1, 1980 to Oct. 31, 1981	1st	0	0	0
From Nov. 1, 1981 to Aug. 31, 1982	2d Pt. 1	0	0	0
From Sept. 1, 1981 to Oct. 31, 1982	2d Pt. 2	100	0	100
From Nov. 1, 1982 to Oct. 31, 1983	3d	100	0	100
From Nov. 1, 1983 to Oct. 31, 1984	4th	100	0	100
From Nov. 1, 1984 to Oct. 31, 1985	5th	75	25	100
From Nov. 1, 1985 to Oct. 31, 1986	6th	50	30	80
From Nov. 1, 1986 to Oct. 31, 1987	7th	25	42.5	67.5
From Nov. 1, 1987 to Oct. 31, 1988	8th	0	67.5	67.5
From Nov. 1, 1988 to Oct. 31, 1989	9th	0	67.5	67.5

The total additional volume which Northern is requesting authorization to import is 98.55 Bcf of natural gas. The price will be the international border price as set from time to time by the National Energy Board (NEB) of Canada, subject to approval by ERA. The border price currently is $4.94 (U.S.) per MMBtu.

To facilitate its arrangement with Consolidated, as reflected in the May 13, 1982 amending agreement, Northern requests authority to import additional volumes of natural gas from Canada from November 1, 1987 through October 31, 1989. Specifically, Northern is requesting the FERC to authorize Northern to import near Monchy up to 67,500 Mcf per day for an additional two-year term ending October 31, 1989 and is asking ERA for authority to import near Emerson up to 135,000 Mcf per day and up to 49,275,000 Mcf per year, minus whatever volumes Northern elects to import via pipeline facilities related to ANGTS at Monchy, for an additional two-year term ending October 31, 1989.

In support of its application, Northern states that, by 1984, production from presently connected sources of gas will be insufficient to meet its system demands. Thus, Northern states, new reserve additions will be needed to enable it to meet its customers' needs. Northern further states that authorization of its proposed amendment will enhance its diversity of supply. For these reasons, Northern asserts the application is not inconsistent with the public interest.

Other information

Any person wishing to become a party to the proceeding, and thus to participate as a party in any conference or hearing which might be convened, must file a petition to intervene. Any person may file a protest with respect to Northern's application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements that are specified by the regulations that were in effect on October 1, 1977 in 18 CFR 1.8 and 1.10. They should be filed with the Natural Gas Branch, Economic Regulatory Administration, Room 6144, RG–631, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461. All protests and petitions to intervene must be filed no later than 4:30 p.m. November 4, 1982.

A hearing will not be held unless a motion is made by a party or person seeking intervention and granted by the ERA, or if the ERA on its own motion believes that a hearing is necessary or required. A person filing a motion must demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, the ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Northern's application is available for inspection and copying in the Natural Gas Branch Docket room, located in Room 6144, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, D.C., on September 28, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82–27159 Filed 10–1–82; 8:45 am]

BILLING CODE 6450–01–M

Hearings and Appeals Office

Cases Filed; Week of August 20 Through August 27, 1982

During the week of August 20 through August 27, 1982, the appeals and applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the

procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comment shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: September 27, 1982.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 20 through Aug. 27, 1982]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 20, 1982	Eastern of New Jersey, Springfield, N. J.	RR7-2	Request for modification/rescission in the Tenneco refund proceeding. If granted: The August 3, 1982 Decision and Order (Case No. RF7-89) issued to Eastern of New Jersey would be modified regarding the firm's application for refund submitted in the Tenneco refund preoceeding.
Do	Kern Oil and Refining Co., Springfield, N. J.	RR7-1	Request for modification/rescission. in the Tenneco refund proceeding. If granted: The August 3, 1982 Decision and Order (Case No. RF7-59) issued to Kern Oil and Refining Company would be modified regarding the firm's application for refund submitted in the Tenneco refund proceeding.
Do	Superior Oil Service Springfield, New Jersey	RR7-3	Request for modifiction/rescission in the Tenneco refund proceeding. If granted: The August 3, 1982 Decision and Order (Case No. RF7-94) issued to Superior Oil Service would be modified regarding the firm's application for refund submitted in the Tenneco refund proceeding.
Aug. 23, 1982	Atlantic Richfield Co., Washington, D.C.	HER-0036	Request for modification/rescission. If granted: The August 18, 1982 Decision and Order (Case No. BEE-0373) issued to Ashland Oil Inc. by the Office of Hearings and Appeals would be modified regarding the amount of restitution granted to Atlantic Richfield Co. based upon its profits from the sale of upper tier domestic crude oil to Ashland Oil, Inc.
Do	County Fuel Company, Inc., Towson, Md.	HRH-0010	Reguest for evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with the Statement of objections submitted by County Fuel Company in response to the Proposed Remedial Order issued to that firm (Case No. HRO-0058).
Do	True Oil Co., Casper, Wyo.	HRZ-0087	Interlocutory order. If granted: The Proposed Remedial Order issued to True Oil Company (Case No. BRO-1464) would be dismissed.
Aug. 25, 1982	Tipperary Corp., Washington, D.C.	HRD-0078, HRH-0078	Motions for discovery and evidentiary hearing. If granted: An evidentiary hearing would be convened and discovery would be granted to Tipperary Corporation in connection with its Statement of Objections to the June 16, 1982 Proposed Remedial Order issued to that firm (Case No. HRO-0078).
Do	Broadway Shell, Oakland, Calif.	HRR-0039	Request for modification/rescission. If granted: The June 30, 1982 Decision and Order (Case No. BRO-1542) issued to Broadway Shell would be modified with respect to Table I of the Proposed Remedial Order issued to the firm on March 31, 1981.
Aug. 26, 1982	Gulf Oil Corp., Houston, Tes.	HER.0038	Request for Modification/rescission. If granted: The July 19, 1982 Decision and Order (Case No. BEE-0373) issued to Ashland Oil, Inc., would be modified regardifng the amount of restitution granted to Gulf Oil Corp. and other suppliers.
Do	The W.N. Gates Company, Inc, Savannah, Ga.	HFA-0079	Appeal of an information request Denial. If granted: The August 19, 1982 Decision and Order issued by the DOE Division of Materials & Procurement would be rescinded, and W.N. Gates Company would receive access to certain DOE information.
Aug. 27, 1982	California Energy Resources Conservation & Development Commission, Washington, D.C..	HFA-0080	Appeal of informatiaon request denial. If granted: The August 4, 1982 Information Request Denial issued by the DOE Office of Buildings Energy Research and Development would be rescinded and the California Energy Resources Conservation and Development Commission would receive access to certain DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Aug. 20 to Aug. 27, 1982]

Date	Name of refund proceeding/ name of refund applicant	Case No.
5-11-82	OKC Corp/Pester Refining Co	RF13-26.
5-20-82	OKC Corp/Consumers, Inc	RF13-27.
5-27-82	OKC Corp/Standard Oil Co. of Ind.	RF13-28.
8-23-82	Triton/Tenneco Oil Co	RF18-2.
8-26-82	Panhandle/Missouri Self Service Gas C0.	RF15-2.
8-26-82	Panhandle/Western Petroleum Co..	RF15-3.
3-30-82	Pennzoil/Zimmerman Fuel Distributors.	RF10-56.

[FR Doc. 82-27158 Filed 10-1-82; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Conduct of Employees; Waiver

Section 207(f), title 18, United States Code, and section 605(a)(3) of the Department of Energy Organization Act (Pub. L. 95-91) authorize the Secretary of Energy to waive the post-employment restrictions of subsections (a), (b), and (c) of section 207, title 18, United States Code, and of subsection (a)(1) of section 605 of the Department of Energy Organization Act, respectively, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications (in the case of section 207), or which lies ina scientific or technological field (in the cae of section 605), where it has been demonstrated that such a waiver would serve the national interest.

It has been established to my satisfaction that Harold D. Bengelsdorf, former Director of the Department's Office of Nuclear Affairs, has an outstanding and unique combination of technological qulaifications with respect to the nuclear fuel cycle and international nuclear affairs. I am further satisfied that it will serve the national interest to permit him to contact officials of the Department of Energy in connection with his participation in a study of the role of penalties and other sanctions in the implementation of United States international nuclear nonproliferation policy. Mr. Bengelsdorf's participation will be pursuant to a contract between the Department of Energy and International Energy Associates Ltd., his current employer. I am satisfied that these activities are in a technological field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsections (a), (b) and (c) of section 207, title 18, United States Code (in consultation with the Director of the Office of Government Ethics), and of subsection (a)(1) of

section 605 of the Department of Energy Organization Act, with respect to contact by Mr. Bengelsdorf with oficials of the Department of Energy to permit him to undertake the stated activities on behalf of his current employer, International Energy Associates Ltd.

Dated: September 24, 1982.

James B. Edwards,

Secretary of Energy.

[FR Doc. 82-27156 Filed 10-1-82; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference

September 28, 1982.

Meeting

Thursday, October 21, 1982, 9:30 A.M.–12 Noon,[1] Satellite Television Corporation, 1301 Pennsylvania Avenue, NW., 5th Floor Conference Room, Washington, D.C.

Agenda

(1) Approval of agenda; (2) presentation of addendum to final report; (3) approval of addendum to final report; (4) other business.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-27163 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-661, File No. BP-810612AA; and BC Docket No. 82-662, File No. BP-811015AP]

Bold Production, Inc. and Plateau Communications, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Bold Production, Inc., St. Johns, Arizona, Req: 1590 kHz, 5 kW, D, BC Docket No. 82-661, File No. BP-810612AA; Plateau Communications, Inc., St. Johns, Arizona, Req: 1590 kHz, 5 kW, DA-N, U, BC Docket No. 82-662, File No. BP-811015AP; for construction permit.

Adopted: September 20, 1982.

Released: September 24, 1982.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. *Bold Production, Inc.* The material submitted in the Bold Production application does not demonstrate the applicant's financial qualifications. Specifically, the balance sheet submitted by the principal stockholder, Edgar E. Mullin, shows no current liquid assets available to meet the proposed costs of $62,032. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an apporpriate issue, *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378, released July 15, 1982.

3. In addition, Bold Production failed to submit a programming narrative statement showing how it intends to meet the needs of the proposed service area. An amendment is required.

4. *Environmental Questions.* The environmental statements required by § 1.1311(a) of the Rules are deficient as follows: Bold Production did not state the zoning classification (if any) of the site; and Plateau Communications did not describe the land uses surrounding the site, or state the zoning classification (if any) of the site. An amendment is required.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

6. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

7. It is further ordered, That Bold Production, Inc., shall submit financial certification, in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

8. It is further ordered, That Bold Production, Inc., and Plateau Communications, Inc., shall amend their applications as specified in paragraphs 3 and 4 above, within 30 days after this order is published in the **Federal Register**.

9. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

10. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of publication of the notice as required by § 73.3593(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division Broadcast Bureau.

[FR Doc. 82-27167 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

Eastern Associated Services, Inc. and Parkersburg Family Television, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Eastern Associated Services, Inc., Parkersburg, West Virginia, BC Docket No. 82-669, File No. BPCT-810424KG; Parkersburg Family Television, Inc., Parkersburg, West Virginia, BC Docket No. 82-670, File No. BPCT-81072OKH; for construction permit for a new television station.

Adopted: September 20, 1982.

Released: September 24, 1982.

[1] Note that the meeting will be extended until 4:00 P.M., if necessary to complete business.

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned applications of Eastern Associated Services, Inc. (EASI) and Parkersburg Family Television, Inc. (PET), for a new commercial television station to operate on Channel 39 in Parkersburg, West Virginia; and a petition to deny filed by Benedek Broadcasting Corporation, licensee of WTAP–TV (WTAP) Channel 15, Parkersburg, West Virginia, and related pleadings.

2. WTAP claims standing as a party in interest under Section 309(d) of the Communications Act of 1934, as amended, on the grounds that because the above applicants would be in the same community, the two stations would compete for audience and revenues and that operation as proposed would cause economic injury to Benedek. We find that WTAP has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008 (1940).

EASI

3. *Legal Qualifications.* WTAP contends that EASI has not shown that it is legally qualified to construct and operate its proposed station. Specifically, WTAP claims that EASI's articles of incorporation do not authorize EASI to establish a television station. In addition, WTAP argues that the ownership information is incomplete, since EASI has authorized 5,000 shares of stock and there is no indication in Section II that any shares have already been subscribed by Robert J. McClay, the only incorporator of EASI.

4. In its "Opposition," EASI contends that its articles of incorporation are sufficient for Commission purposes. *E.H. "Pepper" Schultz*, 46 RR 2d 23, 26 (1979). EASI states that its articles allow it to engage "in any lawful act or activity." Regarding EASI's stock ownership, EASI contends that its application accurately reflects the correct ownership of the corporation as required by FCC Form 301. EASI concedes that its application reflects ten directors while the by-laws authorize only nine. EASI states, however, that an amendment to the by-laws is forthcoming.

5. WTAP alleges that EASI has not established its legal qualifications, or provided sufficient ownership information. However, the above issues are now moot and will not be considered herein since EASI has adequately provided information responsive to petitioner's arguments.

6. *Network Affiliation.* In response to Question 13, Section IV–A, and Question 12, Section IV–B, EASI lists 64 hour per week of network programming and what appears to be 6 hours of network news, respectively. Although EASI now states that its application is not dependent upon network affiliation, neither of the above sections has been amended to reflect the change. However, inasmuch as the descrepancy appears to be inadvertant, EASI will be expected to amend its application accordingly to reflect the changes.

7. WTAP argues that the material submitted in EASI's application does not demonstrate the applicant's financial qualifications.[1] Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements and to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge, who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82–378, released July 15, 1982.

8. *Cross Interest.* WTAP contends that a cross-interest question exists with respect to EASI's application. *Golden West Broadcasters*, 16 FCC 2d 918 (1969). Specifically, WTAP notes that in Section II, Table II of the application, EASI reports that A. Tim Archer, a 10% stockholder, officer and director, is also a vice president, director, general manager and 49% stockholder of Aud Archer, Inc. (AA), an advertising agency in Parkersburg, West Virginia. WTAP contends that, since AA has placed advertising for local businesses on WTAP in the past, Archer's potential dual interests raise a question as to whether Archer will favor EASI in placing advertising on its proposed station rather than the local competing station. *Eastern Broadcasing Corp.*, 30 FCC 2d 745 (Rev. Bd. 1971).

9. EASI asserts that AA has no broadcast-related business and does not place advertising on local broadcast stations. EASI further asserts that its business is print-related and it does not solicit broadcast rates of area stations nor is it privy to their internal operations. They play no role in program selection or placemer.. of advertising on these stations. Consequently EASI argues that WTAP's reliance on *Eastern Broadcasting Corp., supra*, and *Golden West Broadcasters, supra*, is misplaced.

10. The objective of the Commission's cross-interest policy is the promotion and maintenance of full competition between two or more broadcast stations in the same area, *Golden West Broadcasters, supra*, and to that end, the so-called cross-interest policy has been applied in situations involving other than actual proprietary ownership interests. *Golden West Broadcasters*, at 921; *Eastern Broadcasting Corp, supra*. However in *Golden West Policy*, 87 FCC 2d 918 (1981), the Commission overruled its decision in *Golden West Broadcasters*. Briefly, the *Golden West* policy applied to sales representatives, who are agents acting on behalf of broadcast licensees. An advertising agency, in contrast, is an agent for the advertiser, not the broadcaster. The advertising agent comes to the broadcaster as a supplicant, does not have access to internal sales policies of the licensee, and lacks the daily ongoing relationship often characteristic of the sales representative-broadcaster relationship. Thus, if the Commission is no longer concerned with the relationships between broadcasters and their sales representatives, it is reasonable to assume that it is no longer concerned with the lesser degree of involvement characteristic of the advertising agency-broadcaster relationship. Furthermore, in light of the applicant's statement, supported by affidavit, that the advertising agency is print related and that it does not deal with broadcasters, and Mr. Archer's minority stock interests in each of the two business activities, we believe no issue is warranted. Accordingly, no cross-interest issue will be specified.

Parkersburg Family Television, Inc.

11. *Legal Qualifications.* WTAP notes that PFT intends to locate its studio in West Virginia, and its antenna-transmitter in Ohio. Thus, WTAP contends that PFT is not legally qualified since it has received no authority from West Virginia or Ohio to construct a station. WTAP further contends that although PFT's by-laws provide that the corporation's board of directors will consist of at least three persons, PFT has only provided the name of one director. Consequently, WTAP argues that without further

[1] EASI's bank letter does not provide reasonable assurance of funding nor does EASI show current liquid assets to meet proposed expenditures.

information, PFT has failed to demonstrates its legal competency.

12. PFT notes that a copy of its articles of incorporation has been submitted. PFT argues that it is not necessary for it to receive authorization from West Virginia and Ohio to build a station. *Merrimack Valley Broadcasting, Inc.*, FCC 80–50, 45 FR 12484, released Feb. 13, 1980. In response, WTAP argues that *Merrimack Valley Broadcasting, supra,* is distinguishable from this case since no showing has been made that the states in question will not routinely grant authority to foreign corporations.

13. We disagree that PFT's reliance on *Merrimack* is misplaced. In *Merrimack*, the Commission recognized the unnecessary burden of requiring an otherwise legally qualified applicant to establish its authority to do business outside its state during the preliminary stages of the proceeding. PFT has demonstrated its authority to act under Tennessee law. Therefore, since no showing has been made by the petitioner that the applicant cannot ultimately receive authorization from West Virginia and Ohio, we see no reason to require the applicant to make such a showing.

14. PFT indicates that $96,132 will be required to construct the proposed station and to operate it for the first three months, itemized as follows:

Equipment lease payments	$24,632
Land/Building (lease)	1,500
Legal (other costs included in equipment installation quotation)	9,000
Operating costs (three months)	61,000
Total proposed expenditures	$96,132

15. WTAP contends that, by its estimation, PFT's proposed expenditures "appear" to be understated. WTAP alleges that: (a) PFT cannot obtain used broadcast equipment at the price indicated; (b) PFT's preparation, construction and initial operating expenses are projected at an unreasonably low level; and (c) there is no specific figure with regard to the leasing expense for the antenna-transmitter site, nor has a leasing agreement been submitted. WTAP further argues that PFT is unable to rely on its proposed bank loan as a source of funds because PFT has not met the terms of the bank letter regarding collateral requirements and loan guarantees by the applicant and its principals.

16. PFT argues that WTAP's contentions are speculative and unsubstantiated. PFT, consequently, submits an affidavit from the president of the equipment manufacturer confirming the existence and availability of the equipment. PFTcontends that its estimated legal costs and leasing expenses are reasonable. PFT notes that its leasing expenses are listed in its first quarter operating budget. WTAP responds that PFT's affidavit is insufficient since no information is provided as to the equipment's condition or cost of acquiring and placing the equipment into use in Parkersburg.

17. The fact that cost estimates submitted by the applicant are lower than those incurred by other stations in the market, or lower than the national average, does not raise a substantial question as to whether the estimates are reasonable. *Eastern Broadcasting Corp.*, 28 FCC 2d 28, 21 RR 2d 417 (Rev. Bd. 1971). In the instant case, petitioner's allegations are speculative and unsupported. WTAP has not shown that the figures are unreasonable on their face, *Eastern Broadcasting Corp., supra,* while in most instances the applicant has provided documentation and price information as well as an affidavit from the equipment supplier. Furthermore, although WTAP alleges that applicant's allowance of $9,000 in legal fees is far below the costs to be incurred, WTAP has not detailed what costs are involved, nor has it shown that the applicant is unable to acquire legal representation at the price indicated. Furthermore, contrary to WTAP's contention, the application has listed the cost estimate for leasing land and studio in its three month operating budget. Accordingly, no issue will be specified.

18. On December 4, 1981, PFT amended its application to show estimated construction and operating expenses of $188,464. To meet these costs, PFT further shows the availability of a $100,000 bank loan and additional funds in excess of $88,500 from Cora Price, the applicant's only shareholder. Accordingly, we find the applicant financially qualified.

Conclusion and Order

19. Except with respect to the issues specified below, we find that the applicants are qualified to construct and operate as proposed. We are, however, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity and the applications must be designated for hearing.

20. Accordingly, it is ordered, That the petition to deny filed by Benedek Broadcasting Corporation is denied.

21. It is further ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications of Eastern Associated Services, Inc., and Parkersburg Family Television, Inc. are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine, on a comparative basis, which of the applications would better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

22. It is further ordered, That EASI shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

23. It is further ordered, That EASI shall amend Sections IV–A and IV–B to correct the inadvertant discrepancy noted i Paragraph 6, above.

24. It is further orderd, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within (20) days of the mailing of this Order, shall file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

25. It is further orderd, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(d) of the Rules.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27168 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 82-655; File No. BPCT-820216KG, et al.]

Elcom, Inc. et al.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of Elcom, Inc., Greenville, North Carolina, BC Docket No. 82–655, File No. BPCT–820216KG; Telecommunications Partners, Ltd., Greenville, North Carolina, BC Docket No. 82–656, File No. BPCT–820415KI; Behrvision of North Carolina, Ayden, North Carolina, BC Docket No. 82–657.

File No. BPCT–820415KM; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it: (a) The above-captioned mutually exclusive applications of Elcom, Inc. (Elcom), Telecommunications Partners, Ltd. (Telecommunications) and Behrvision of North Carolina (Behrvision) for a new new commercial television station to operate on Channel 14, Greenville, North Carolina,[1] and (b) an informal objections filed by the Association of Maximum Service Telecasters, Inc. (AMST) against all three applicants.[2]

2. Behrvision specifies Ayden as its community of license, while the others propose Greenville. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of broadcast service. Since these proposals do serve substantial common areas, however, in addition to the Section 307(b) issue, a contingent comparative issue will also be specified.

3. Due to the proximity of frequencies utilized by Channel 14 and land mobile services, a Channel 14 permittee that inadequately suppresses its secondary emissions could cause interference to land mobile services. *See* § 73.687(i)(1) of the Commission's Rules. Accordingly, the grant of a construction permit to any of the applicants will be conditioned on requiring the permittee to take adequate measures prior to program test authority to prevent interference to land mobile stations in the 460–470 MHz band.

4. Lawrence Behr, the 50% partner in Behrvision, has a small interest in Gray Hardy Broadcasting, Inc. (Gray Hardy), licensee of stations WGHB(AM) and WRQR(FM), Farmville, North Carolina. Section 73.636(a)(1) of the Commission's Rules sets forth a policy against granting a television construction permit to an applicant who directly or indirectly owns, operates, or controls a radio station licensed to a community, such as Farmville, which is encompassed by the predicted Grade A contour of the proposed television station. Behr states that he will terminate all of his interest in WGHB(AM) and WRQR(FM) prior to Behrvision's filing of an application for license. Behr must demonstate such termination before Behrvision commences operation. Similarly, Charles Franklin, a director and 56.6% stockholder of Elcom, proposes to terminate his 80% interest in Francon, Inc., licensee of station WJIK(AM), Camp Lejeune, North Carolina. Camp Lejeune, however, is outside of Elcom's predicted Grade A contour, and WJIK(AM)'s predicted 2 mV/m contour does not encompass Greenville. Consequently, Franklin's proposed divestiture is not required by the rules.

5. Behrvision has certified as to its financial qualifications. However, Behrvision does not certify that sufficient net liquid assets are on hand or are available from committed sources to construct and operate for three months without revenue, which is required in Question 1 of Section III of FCC Form 301. Accordingly, Behrvision will be given the opportunity to submit to the Administrative Law Judge the certification required by the Form or to advise that it cannot make the required certification. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. Since we have not received a determination from the Federal Aviation Administration that Elcom's proposed tower height and location would not constitute a hazard to air navigation; an issue regarding this matter will be specified.

7. After the applications were filed, the Commission issued a notice of proposed rulemaking to delete Channel 29 and add Channel 26 in Wilmington, North Carolina. *Notice of Proposed Rule Making in BC Docket No. 82–352,* Mimeo No. 31637 (released July 1, 1982). Telecommunications and Behrvision would meet all spacing requirements with respect to the proposed Channel 26; however, their proposed sites are one mile short-spaced (out of a required 75 miles) to the reference point for Channel 29. In addition Telecommunications' proposed site is one mile short-spaced (out of a required 20 miles) to that of WUNM–TV, Jacksonville, North Carolina, and Behrvision's proposed site is two miles short-spaced to the same site. The applicants, however, have requested waiver of § 73.610 only with respect to Wilmington.

8. Applicants proposing short-spaced sites must make a threshold waiver showing of the unavailability of non-short-spaced sites. Neither Telecommunications nor Behrvision have done so, and since Elcom has proposed a site that meets all spacing requirements, we cannot determine that fully spaces sites are unavailable to Telecommunications and Behrvision. Accordingly , AMST's informal objection with respect to Telecommunications and Behrvision will be granted, and AMST will be made a party to the hearing. Spacing issues will be specified against Telecommunications and Behrvision.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Elcom, Inc., whether there is a reasonable possibility that the tower height and location proposed by the applicant would constitute a hazard to air navigation;

2. To determine with respect to Telecommunications Partners, Ltd. and Behrvision of North Carolina:

(a) Whether the proposals of the applicants are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances warrant a waiver of that Section;

(b) Whether, in light of the evidence adduced pursuant to (a), above, the applicants are qualified;

3. To determine the areas and population which would receive television service (Grade B or better) from the proposals and the availability of other Grade B Service to such areas and population;

4. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of broadcast service;

5. In the event it is concluded from Issue 4, above, that a choice among applications should not be based solely on considerations relating to Section 307(b), to determine which of the

[1] Behrvision has specified Ayden, North Carolina, as its community of license, pursuant to § 73.607(b) of the Commission's Rules (the "15-mile rule").

[2] AMST argues that each of the applicants has proposed tower sites that do not meet the Commission's mileage separation requirements; however, Elcom subsequently amended its application to specify a non-short-spaced site. Accordingly, AMST's objection with regard to Elcom will be dismissed as moot.

proposals would, on a comparative basis, best serve the public interest;

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, That, in the event of a grant of any of the applications, the construction permit shall contain the following condition:

During equipment tests, authorized by § 73.1610 of the Commission's Rules, the permittee shall take adequate measures to identify and substantially eliminate objectionable interference which may be caused to existing land mobile facilities in the 460–470 MHz band. Documentation that objectionable interference will not be caused to existing land mobile facilities shall be submitted along with the application for license and the appropriate request for program test authority.

12. It is further ordered, That, in the event of a grant of Behrvision's application, the construction permit shall contain the additional condition:

Prior to the commencement of operation, Lawrence Behr shall certify to the Commission that he has severed all interest in and connection with WRQR(FM) and WGHB(AM).

13. It is further ordered, That Behrvision of North Carolina shall submit a financial certification required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

14. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with regard to Issue 1.

15. It is further ordered, That the informal objections filed by the Association of Maximum Service Telecasters, Inc. against Telecommunications and Behrvision are granted, and its informal objection filed against Elcom is dismissed as moot.

16. It is further ordered, That the Association of Maximum Service Telecasters, Inc. is made a party respondent to this proceeding with regard to Issue 2.

17. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

18. It is further ordered, That the applicants herein shall, pursuant to Section 311(a) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27170 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

Gatlinburg Broadcast Communications, Inc. and Vacation Radio Co.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of Gatlinburg Broadcast Communications, Inc., Gatlinburg, Tennessee, Req: 1230 kHz, 250 W, 1 kW–LS,U; BC Docket No. 82–667, File No. BP–810108AE; Vacation Media, Inc. and Hazel Lee Saunooke, d/b/a Vacation Radio Co., Gatlinburg, Tennessee, Req: 1230 kHz, 250 W, 1 kW–LS,U, BC Docket No. 82–668, File No. BP–810410AT,

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned mutually exclusive applications of Gatlinburg Broadcast Communications, Inc. (GBC) and Vacation Media, Inc. and Hazel Lee Saunooke, d/b/a Vacation Radio Company (Vacation) for a construction permit for a new AM broadcast station; (b) petitions to deny both applications filed by Stoner Broadcasting System, Inc. (Stoner), licensee of AM station WHEL, Knoxville, Tennessee; and (c) a motion to dismiss the Vacation application, filed by GBC.[1]

2. Using the ground conductivity indicated by FCC Figure M3, the proposed 0.5 mV/m contours would overlap the 0.5 mV/m contour of class IV, first-adjacent-channel station WHEL, in violation of Sections 73.37(a) and (c) of the Commission's Rules. To demonstrate that there would be no prohibited overlap, GBC has submitted measurements it made on WHEL and on a test transmitter at its proposed site.[2] Stoner, however, faults the test-transmitter measurements as inadequate to establish the efficiency of the antenna system used and conductivities along the measured radials, and criticizes GBC's locations of its proposed contour as involving an excessive swing of the conductivities it determined. Since these objections raise a substantial question as to whether the proposals would cause objectionable interference to WHEL, an appropriate issue will be specified.

3. In its motion to dismiss, GBC alleges that Vacation's application as initially filed was not substantially complete and therefore should have been returned on these grounds pursuant to Section 73.3564(a) of our Rules. Thus, GBC states, instead of including an original engineering proposal, Vacation simply specified a transmitter site next to GBC's site and adopted GBC's engineering data. While the Commission does not condone the practice of copying and using another's work product, our position is that recourse lies properly in a civil court action. *Roanoke Christian Broadcasting, Inc.*, BC–32660, 47 R.R. 2d 1067 (B/C Bur. 1980); *aff'd*, FCC 80–541, released October 2, 1980. Further, we note that Vacation stated that the engineering data it was submitting was GBC's and submitted, at a later date, a showing prepared by its own engineer. Therefore, we fund that Vacation's application was substantially complete when filed.[3]

4. Section 73.24(j) of our Rules requires applicants for new AM stations to show that the proposed 25 mV/m contour will encompass the business district of the community of license and that the proposed 5 mV/m contour (or at night the interference-free contour, if of a higher value) will encompass all residential areas. The information before us does not establish either applicant's compliance with this provision, and neither has requested a waiver, if appropriate. Hence, an issue must be specified.

5. Section 73.3580 of the Rules requires applicants for new broadcast stations to give local notice of the filing of their applications and to file with the Commission a statement of publication. We have no evidence that either

[1] Judith G. Hayes, whose application for a new FM station at Pigeon Forge, Tennessee, was mutually exclusive with the application of Vacation Media, Inc. for a new FM facility at Gatlinburg, had requested that we consolidate this proceeding with the FM proceeding. Her request is moot, however, since the FM proceeding has been terminated with the dismissal of her application and grant of Vacation Media's. *Memorandum Opinion and Order*, FCC 81M–3917, Mimeo No. 005739 (released December 11, 1981).

[2] Vacation relies on GBC's measurements to support its proposal for essentially identical facilities.

[3] Vacation properly incorporated by reference Sections II (Legal Qualifications) and VI (Equal Employment Opportunity) of its FM application for Gatlinburg, file number BPH–10639, as permitted by Instruction E of the application form.

applicant has published the required notice. To remedy this deficiency, each must demonstrate compliance by filing statements of publication with the presiding Administrative Law Judge.

6. Except as indicated above, both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the applications of Gatlinburg Broadcast Communications, Inc. and Vacation Media, Inc. and Hazel Lee Saunooke d/b/a Vacation Radio Company would involve 0.5 mV/m contour overlap with AM station WHEL prohibited by § 73.37(a) and (c) of the Commission's Rules.

2. To determine whether the proposals of Gatlinburg Broadcast Communications, Inc. and Vacation Media, Inc. and Hazel Lee Saunooke d/b/a/ Vacation Radio Company would provide coverage of Gatlinburg as required by § 73.24(j) of the Commission's Rules, and if not whether circumstances exist which warrant waiver of the provision.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

8. It is further ordered, That the petitions to deny filed by Stoner Broadcasting System, Inc., are granted to the extent indicated above, and are denied in all other respects, and that Stoner Broadcasting System, Inc. is made a party to this proceeding.

9. It is further ordered, That the motion to dismiss the application of Vacation Media, Inc. and Hazel Lee Saunooke d/b/a/ Vacation Radio Company, filed by Gatlinburg Broadcast Communications, Inc., is denied.

10. It is further ordered, That the motion to consolidate filed by Judith G. Hayes is dismissed as moot.

11. It is further ordered, That Gatlinburg Broadcast Communications, Inc. and Vacation Media, Inc. and Hazel Lee Saunooke, d/b/a Vacation Radio Company shall publish local notice of the filing of their applications (if they have not already done so) and shall file statements of publication with the presiding Administrative Law Judge within 40 days after this order is published in the **Federal Register.**

12. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) and (e) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

13. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication as required by §73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27164- Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

Craig Broadcasting Co. et. al.; Designating Applications For Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of Craig Broadcasting Co., Defiance, Ohio, BC Docket No. 82-652, File No. BPCT-820304KE; Community Television Associates, Defiance, Ohio, BC Docket No. 82-653, File No. BPCT-820510KV; Harlan and Donna Kriete, Defiance, Ohio, BC Docket No. 82-654, File No. BPCT-820510KW; for construction Permit.

By the chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above mutually exclusive applications of Craig Broadcasting Co. (Craig), Community Television Associates (CTA), and Harlan and Donna Kriete (Krietes) for a new commercial television station to operate on Channel 65 in Defiance, Ohio.

2. Since we have not received a determination from the Federal Aviation Administration that CTA's and the Krietes' proposed tower height and location would not constitute a hazard to air navigation, an issue regarding this matter will be specified.

Harlan and Donna Kriete

3. The Krietes' proposed tower is to be located 0.48 miles from the directional array of AM station WONW, Definance, Ohio. Because of the proximity of the applicants' proposed tower to WONW, any grant of a construction permit to the applicant will be conditioned to ensure that WONW's radiation pattern is not adversely affected by the construction of the proposed station.

4. The Krietes failed to submit the contour maps which are required in Question 10 of Section V-C of Form FCC 301. Consequently, the Krietes will be required to submit appropriate maps within 30 days of the mailing of this Order.

Conclusion and Order

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to CIA and the Krietes, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That the Federal Aviation Administration is made a party respondent with respect to Issue 1.

8. It is further ordered, That any grant of the construction permit to Harlan and Donna Kriete will be subject to the following condition:

Prior to the construction of the TV tower authorized herein, permittee shall notify AM station *WONW* so that the AM station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commisssion in Washington to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits.

Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the TV tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the array of the AM station has not been adversely affected. The results shall be submitted to the Commission and the AM station. Thereafter, the TV station may commence Limited Program Tests.

9. It is further ordered, That within 30 days of the mailing of this Order, Harlan and Donna Kriete shall submit the required contour maps.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27171 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

MFP, Inc. et al.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of MFP, Inc., Lawrence, Massachusetts, BC Docket No. 82-658, File No. BPCT-811030KE; Metrovision, Inc., Middleton, Massachusetts; BC Docket No. 82-659, File No. BPCT-811030KK; Seacoast Broadcasting, Inc., Salem, Massachusetts, BC Docket No. 82-660, File No. BPCT-811030KL; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of MFP, Inc. (MFP), Metrovision, Inc. (Metro) and Seacoast Broadcasting, Inc. (Seacoast) for authority to construct a new commercial television station on Channel 62, Middleton, Massachusetts.[1]

2. Metro specifies Middleton as its city of license, however, MFP specifies Lawrence and Seacoast specifies Salem. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, whether a new station in Middleton, Lawrence or Salem would best provide a fair, efficient and equitable distribution of television service. If the Section 307(b) issue is not determinative (the applicants would serve substantial areas in common), all applicants can be considered under the comparative issue.

3. All applicants propose to operate from sites located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notice*, T.I.A.S. 2594 (1952). In the event of a grant of any application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

4. The material submitted in Metro's application does not demonstrate the applicant's financial qualifications. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378 (released July 15, 1982.)[2]

5. MFP proposes a transmitter site which is six miles short-spaced to vacant assignment Channel 48, Worchester, Massachusetts. MFP has not requested a waiver of § 73.610(d) of the Rules. The other applicants have proposed transmitter sites that are consistent with the minimum separation requirements. Accordingly, an issue with respect to the short-spacing of MFP's proposed transmitter site will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before the Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations that would receive Grade B or better service from the proposals and the availability of other Grade B services to such areas and populations.

2. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would provide a fair, efficient and equitable distribution of television service.

3. To determine with respect to MFP, Inc. whether the transmitter site proposed is consistent with the minimum mileage separation requirements of § 73.610 of the Rules and if not, whether circumstances exist which would warrant a waiver of the rule.

4. In the event it is concluded from Issue 1, above, that a choice among applicants should not be based solely on considerations relating to Section 307(b), to determine which proposal would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That, in the event of a grant of MFP, Inc.'s

[1] Channel 62 is assigned to Middleton, Massachusetts. Lawrence and Salem are located within 15 miles of Middleton. Accordingly, under § 73.607 of the Commission's Rules, Channel 62 is available for use in Lawrence and Salem.

[2] Metro has not documented its new capital and an S.B.A. loan.

application, the construction permit shall contain the following condition:

Operation with effective radiated power in excess of 1000 kW after May 1, 1984 is subject to a further extension of consent by Canada.

9. It is further ordered, That, in the event of a grant of Metrovision, Inc.'s application, the construction permit shall contain the following condition:

Operation with effective radiated power in excess of 1000 kW after January 1, 1984 is subject to a further extension of consent by Canada.

10. It is further ordered, That, in the event of a grant of Seacoast Broadcasting, Inc.'s application, the construction permit shall contain the following condition:

Operation with effective radiated power in excess of 1000 kW after May 1, 1984 is subject to a further extension of consent by Canada.

11. It is further ordered, That, Metrovision, Inc. shall submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

12. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

13. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27186 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

Ramon Rodriguez Nieves and Carlos Ortiz; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of Ramon Rodriguez Nieves, Mayaguez, Puerto Rico, BC Docket No. 82-650, File No. BPCT-820331KF; Carlos Ortiz, Mayaguez, Puerto Rico, BC Docket No. 82-651, File No. BPCT-820415KF; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above mutually exclusive applications of Ramon Rodriguez Nieves and Carlos Ortiz for a new commercial television station to operate on Channel 16, Mayaguez, Puerto Rico.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each of the proposals. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 dBu ,Grade B) contours, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether comparative preferences should accrue to one or more of the applicants.

Carlos Ortiz

3. The material submitted in the application does not demonstrate the applicant's financial qualifications.[1] Although the financial standards are unchanged, the Commission has changed the application form to require only certfication as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certficiation to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No., 82-378 (released July 15, 1982).

Conclusion and Order

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, that Carlos Ortiz shall submit a financial certification in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

7. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27169 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

[1] Omitted studio and tower site rentals, salary, utility, programming and other three months operating costs.

[BC Docket No. 82-671, File No. BP-810403AH]

Tri-Star Communications, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 20, 1982.

Released: September 24, 1982.

In re applications of Tri-Star Communications, Inc., Houston, Texas, Req: 1180 kHz, 5 kW, 10 kW-LS, DA-2, U, BC Docket No. 82-671, File No. BP-810403AH; Vel Communications Corp., Houston, Texas, Req: 1180 kHz, 5 kW, 50 kW-LS, DA-2, U, BC Docket No. 82-672, File No. BP-810410AD; Humble Audiocomm Corp., Humble, Texas, Req: 1180 kHz, 1 kW, 10 kW-LS, DA-N, U, BC Docket No. 82-673, File No. BP-810410AS; Tierra Alta Broadcasting, Inc., Houston, Texas, Req: 1180 kHz, 5 kW, 50 kW-LS, DA-2, U, BC Docket No. 82-674, File No. BP-810410AV; KCOH, Inc., KCOH, Houston, Texas, Has: 1430 kHz, 1 kW, Day, Req: 1180 kHz, 50 kW, 2.5 kW-LS, DA-2, U, BC Docket No. 82-675, File No. BP-810410BA; E. W. Wilcots, d.b.a. Bible Days Broadcasting Co., Galena Park, Texas, Req: 1180 kHz, 1 kW, 10 kW-LS, DA-2, U, BC Docket No. 82-676, File No. BP-810724AJ; for construction permit.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new and modified AM broadcast stations.

2. *Common technical matters.* The 0.5 mV/m daytime contours of the Vel, Tierra Alta, and KCOH proposals would overlap the 0.5 mV/m contour of first-adjacent-channel station XERT, Reynosa, Tamaulipas, Mexico, in violation of § 73.37(a) of the Commission's Rules. However, these proposals are all located more than 300 miles from XERT, the overlap occurs only because of the high-conductivity salt-water path to XERT, and the overlap area is minimal and entirely within the United States. Under these circumstances, waiver of § 73.37(a) is clearly warranted. See *Teche Broadcasting Corp.*, FCC 74-468, 30 RR 2d 201 (1974).

3. Two of the applicants, Audiocomm and Bible Days, propose service to relatively small suburbs of Houston, Texas (1980 population 1,594,086). Both Audiocomm's proposal for Humble (1980 population 6,729) and Bible Days' proposal for Galena Park (1980 population 9,879) would apparently provide 5 mV/m daytime service to all of Houston. Under a policy announced in *Policy Statement on Section 307(b)*, 2 FCC 2d 190 (1965), and affirmed in *AM Station Assignment Standards*, 54 FCC 2d 1, 21-22 (1975), a presumption therefore arises that these applicants realistically propose to serve Houston rather than Humble and Galena Park. Appropriate issues will be specified.

4. The four Houston applicants request waiver of § 73.21(a)(ii)(c) of the Rules which establishes a one-kilowatt nighttime power ceiling for Class II-B stations on 1-A clear channels in already well served areas such as Houston. They have requested a waiver of the rule but their showings fall far short of establishing that waiver is warranted. The applicants have a heavy burden to show that the power they propose is necessary to provide principal-city service and will not impede the Commission's allocation objectives; they may meet the latter by showing either that the higher power would not preclude other possible co-channel unlimited-time Class II assignments or that the improved principal city service entailed by the higher power clearly outweighs any potential service that might be precluded. Since it cannot be determined from the record if waiver of § 73.21 is warranted, issues will be specified.

5. Despite the power they propose, the Tri-Star, Vel, Tierra Alta, and KCOH proposals would not provide 10 mV/m nighttime service to all of Houston's residential areas, as required by § 73.24(j) of the Commission's Rules.[1] Because Tri-Star's proposal would serve 96 percent of Houston and KCOH's 92.8 percent, these two proposals would substantially comply with § 73.24(j) with the facilities proposed. *AM Station Assignment Standards*, 39 FCC 2d 645, 670 (1973). We cannot determine the degree of Vel's and Tierra Alta's coverage deficiencies, though,[2] and consequently must specify appropriate issues. In addition, because Audiocomm depicted neither its proposed 10 mV/m nighttime contour nor Humble's business and residential areas, we cannot determine whether its proposal satisfies § 73.24(j).

6. *Tri-Star Communications, Inc.* Section 73.35(a) of the Commission's Rules prohibits common ownership of AM stations and television stations in the same community. J. Livingston Kosberg, 10.4% stockholder, director and treasurer of Tri-Star is vice president, director and 14% stockholder of Channel 20, Inc., licensee of station KTXH(TV), Houston, Texas. Robert A. Caplan, 2.6% stockholder of Tri-Star is secretary-treasurer, director and 5% stockholder of Channel 20, Inc. Note 8 to § 73.35 provides that applications that show common ownership between UHF television stations and AM broadcast stations will be handled on a case-by-case basis in order to determine whether common ownership, operation or control of the stations would be in the public interest. We cannot determine from the record if common ownership of both stations would be in the public interest; therefore, and appropriate issue will be specified.

7. The material submitted in the Tri-Star application does not demonstrate the applicant's financial qualifications: Specifically, the bank letter is not a commitment and the corporate balance sheet shows only $27,511 in net liquid assets. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378, released July 15, 1982.

8. *Tierra Alta Broadcasting, Inc.* This applicant's corporate by-laws state that its officers will include a vice-president and a treasurer, but Tierra Alta has not identified who holds these offices. An amendment is required. The local notice of the filing of Tierra Alta's application was apparently published only once. The applicant must publish the notice three additional times to comply with § 73.3580 of the Rules.

9. KCOH, Inc. KCOH estimates that the population within its daytime 1 V/m blanket contour would be 17,766, or 1.09 percent of the 1,627,959 within its 25 mV/m contour. Applicant recognizes that this exceeds the one-percent limit set out in § 73.24(g) of the Rules. However, it maintains that the excess blanket population is modest, and undertakes to satisfy all legitimate complaints that might arise. Under these circumstances, waiver is warranted; but should KCOH's application be granted, the permit must contain an appropriate condition. See *e.g. Mariner Communications, Inc.*, FCC 80-308, 47 RR 2d 1056 (1980).

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[1] Section 73.24(j) speaks of residential service within the 5 mV/m or nighttime interference-free contour, whichever is greater. Most class II-B stations will have a normally protected contour of 10 mV/m, and thus may well receive interference to that contour from later-authorized stations. For them, we disregard service beyond the 10 mV/m contour in determining compliance with § 73.24(j).

[2] Tierra Alta failed to submit a map of its proposed 10 mV/m nighttime contour, and must do so by amendment. Neither Vel nor Tierra Alta stated the magnitude of its coverage deficiency.

10. The material submitted in the Bible Days application does not demonstrate the applicant's financial qualifications. Specifically, it has not shown that is has a valid bank loan or documented pledges, and the balance sheet of Rev. Wilcots does not show sufficient net liquid assets to meet his commitment, all needed to meet a requirement of $274,500. Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 30 days from the date of mailing of this order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in revised Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378, released July 15, 1982.

11. We have no evidence that Bible Days published local notice of its application as required by § 73.3580 of the Rules. It must demonstrate that it has done so.

12. *Environmental Questions.* The environmental statements required by § 1.1311(a) of the Rules which were submitted by five of the applicants are deficient as follows: *Tri-Star* did not describe the land uses surrounding the site or state whether the proposal is a source of controversy on environmental grounds in the local community; *Vel* did not state whether the proposal is a source of controversy on environmentsl grounds in the local community; *TRierra Alta* did not describe the land uses surrounding the site of state whether the proposal is a source of controversy on environmental grounds in the local community; *KCOH* did not state zoning classification (if any) of the site; Bible Days did not describe the land uses surrounding the site or state the zoning classification (if any) of the site. An amendment is required.

13. *Other matters.* Except as indicated by the issues specified below, all of the applicants are qualified to construct and operate as proposed.[3] However, the proposals are mutually exclusive, so they must be set for hearing in a consolidated proceeding. Because the proposals are for three different communities, an issue must be specified to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of them would best provide a fair, efficient, and equitable distribution of radio service. In addition, because four of the proposals are for Houston, the other two may be considered proposals for Houston, and all of the proposal would serve substantial areas in common, a contingent comparative issue will also be specified.

14. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine with respect to the nighttime proposals of Tri-Star, Vel, Tierra Alta, and KCOH, whether circumstances exist which warrant waiver of § 73.21(a)(2)(ii)(c) for each.

2. To determine:

a. Whether the nighttime proposals of Vel and Tierra Alta would provide 10 mV/m service to all of Houston's residential areas, as required by § 73.24(j) of the Commission's Rules;

b. Whether the nighttime proposal of Audiocomm would provide 10 and 25 mV/m service to Humble's residential areas and business district, respectively, as required by § 73.24(j) of the Commission's Rules; and

c. If not, whether circumstances exist which warrant waiver of § 73.24(j) for each.

3. To determine with respect to Tri-Star whether common ownership, operation or control of UHF television station KTXH and its proposed AM station would be in the public interest.

4. To determine with respect to Audiocomm:

a. Whether its proposal would realistically provide a local transmission service for Humble, Texas, or for Houston, Texas; and

b. Whether, in the event it be concluded pursuant to (a) above that the proposal would not provide a local transmission service for Humble, Texas, whether the proposal meets the technical provisions of the Rules for AM broadcast stations assigned to Houston, Texas.

5. To determine with respect to Bible Days:

a. Whether its proposal would realistically provide a local transmission service for Galena Park, Texas, or for Houston, Texas; and

b. Whether, in the event it be concluded pursuant to (a) above that the proposal would not provide a local transmission service for Galena Park, Texas, whether the proposal meets the technical provisions of the Rules for AM broadcast stations assigned to Houston, Texas.

6. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

7. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

8. To determine, in the event it be concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which application, if any, should be granted.

15. It is further ordered, That Tri-Star, Vel, Audiocomm, Tierra Alta, KCOH, and Bible Days shall amend their applications as specified in paragraphs 5, 8 and 12 above, within 30 days after this order is published in the **Federal Register.**

16. It is further ordered, That Tri-Star and Bible Days shall submit financial certification, in the form required by Section III, F.C.C. Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

17. It is further ordered, That Tierra Alta and Bible Days shall publish local notice of the filing of their applications, as specified in paragraphs 8 and 11 above (if they have already done so), and shall certify their publication to the presiding Administrative Law Judge within 40 days after this order is published in the **Federal Register.**

18. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

[3] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

19. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27165 Filed 10-1-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-188]

Brady Savings and Loan Association, Brady, Texas; Final Action, Approval of Post-Approval Amendments to Mutual-to-Stock Conversion Application

September 17, 1982.

Notice is hereby given that on September 17, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved Post-Approval Amendment No. 2 to the mutual-to-stock conversion application of Brady Savings and Loan Association, Brady, Texas ("Association"). The application had been approved by the Board by Resolution No. 80-799-B, dated December 12, 1980. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Topeka, No. 3 Townsite Plaza, 120 East 6th Street, Topeka, Kansas 66603.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-27269 Filed 10-1-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-186]

First Federal Savings and Loan Association of Catawba County, Conover, North Carolina; Final Action, Approval of Post-Approval Amendments to Mutual-to-Stock Conversion Application

August 30, 1982.

Notice is hereby given that on September 1, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved Post-Approval Amendment No. 2 to the mutual-to-stock conversion application of First Federal Savings and Loan Association of Catawba County, Conover, North Carolina ("Association"). The application had been approved by the Board by Resolution No. 82-1, January 6, 1982. Copies of the application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Atlanta, Coastal States Building, 260 Peachtree Street, N.W., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-27267 Filed 10-1-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-187]

United Federal Savings and Loan Association, Rocky Mount, North Carolina; Final Action, Approval of Post-Approval Amendment to Mutual-to-Stock Conversion Application

August 31, 1982.

Notice is hereby given that on September 2, 1982, the General Counsel of the Federal Home Loan Bank Board ("Board"), acting pursuant to authority delegated to him by the Board, approved a post-approval amendment to Section 14(a) of the Plan of Conversion of United Federal Savings and Loan Association, Rocky Mount, North Carolina. The Application for Conversion had been approved by the Board by Resolution No. 80-99, dated February 14, 1980. Copies of the Application and all amendments thereto are available for inspection at the Secretariat of the Board, 1700 G Street, N.W., Washington, D.C. 20552, and at the Office of the Supervisory Agent, Federal Home Loan Bank of Atlanta, Coastal States Building, 260 Peachtree Street, N.W., Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-27268 Filed 10-1-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Inactive Tariffs—Bureau of Tariffs; Cancellation

By Notice published in the **Federal Register** on July 14, 1982, the Commission notified the carriers named therein of its intent to cancel their foreign tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled or the carriers failure to respond to this Notice.

Accordingly, by authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981, the tariffs of the carriers listed are hereby cancelled.

AAA Foreign Freight Forwarders	FMC-1
A. Bottacchi, S.A. de navegacion	FMC-6
ACP Midwest Inc	FMC-1
Admiral Shipping Agency	FMC-1
A. J. Cunningham Packing Corp	FMC-1
Allied Despatchers Ltd	FMC-1
Allpac International	FMC-1
American Pacific Container Line Inc	FMC-2, 3
Ancha Shipping Company Inc	FMC-1
Anchor Freight Consolidators	FMC-1, 2, 3
The Atcheson, Topeka & Santa Fe Railway Company	FMC-1
Atlantic Biscay Container Line	FMC-1, 2, 3
Balken Consolidators Inc	FMC-1
Barb Shipping Company Inc	FMC-1
Barton Export Boxing Corp	FMC-1
Batavier Container Line	FMC-1
Bocimar N.V	FMC-2
Canada-United Kingdom Freight Conference	Tariff No. 9
Canadian Continental Eastbound Freight Conference	FMC-5
Caribbean-American Transportation Co., Inc	FMC-1
Caribbean Freightcon Inc	FMC-1
Caribbean Shipping (Brazil Svc) Lt	FMC-1, 2, 3
Caribbean Shipping Lt	FMC-6
Certage Marine	FMC-1
Comptoir Commercial Et Maritime S.A. (COMA)	FMC-1
Computerized Freight Management Corp	FMC-1
Confreight Marine Line Inc	FMC-7, 8, 9, 10, 11, 12
Consolidadora Del Caribe S.A	FMC-2
Consolidated Cargo Corp	FMC-1
Consolidadora Maritima Comarca C.A	FMC-2
Container Express Inc	FMC-1
Container-Lloyd Intermodal Lines	FMC-23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43
Continental Canadian Westbound Freight Conference	Tariff "L"
Crescent Line Inc	FMC-1
Cytanco S.A	FMC-2
Distribution Services International	FMC-1
Double Eagle Shipping Company Inc	FMC-2
Exporters Forwarding Co., Ltd	FMC-2
Far East Container	FMC-3
Five Continent Shipping Company	FMC-1
G. A. Lopez	FMC-1
Gaynar Shipping	FMC-1, 2
General Transportation Service Inc	FMC-1
Genesis Shipping Corporation Inc	FMC-1
C. S. Greene & Company Inc	FMC-31
Greene Container Transport Inc	FMC-1
Gulf Ocean Lines	FMC-1, 2, 3
Gulf United Line Ltd	FMC-1
Hands Across the Sea Inc	FMC-1
Hansa Line	FMC-19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32
Held-Tite Inc	FMC-1
J. F. Hillebrand Corp. of America	FMC-1
Hong Kong Globe Ltd	FMC-1
Hop Kee Line	FMC-1
Houston Line	FMC-1
IDC	FMC-1
Imparca Express Line	FMC-1, 2, 3, 4
Independent Cargo Express Inc	FMC-7, 10, 12, 13, 15
Indian President Lines Ltd	FMC-1
Integrated Container Services Inc. (ICS)	FMC-2
Intercontainer Transport Corp	FMC-2
Interflow (Tank Container System) Limited	FMC-1
Interford Corp	FMC-1
Intermodal Container Inc	FMC-1

International Moving Consultants	FMC-1
International Traffic & Terminal Service Inc	FMC-1
Ivaran Lines	FMC-8
Jasman Inc	FMC-4, 5, 6
Jugooceanija Line	FMC-12
Kameroon Shipping Lines Inc	FMC-1
Karlander Line	FMC-8
King Pak Inc	FMC-1
Kirk Dale Shipping Company Ltd	FMC-1
Kopak Inc	FMC-1
Korea Shipping Corp	FMC-7, 13, 18
Kyokuyo Company Ltd	FMC-1
Lago Line S.A	FMC-1
Linea Maritima Centauro C.A	FMC-2
Lineas Agromar Ltda	FMC-3
Logistical Services Inc	FMC-1
Logistics Inc	FMC-1
Maritimas Del Caribe Co., S. de R.L	FMC-1
Max Grünhut GMBH & Company	FMC-2
Mexican Line	FMC-56
Mini Line	FMC-3
Naviera Caprilles	FMC-1, 2
Naviera Colombiana Ltda	FMC-1
Naviera Nicaraguense S.A. (NANICA)	FMC-4
Naviera Peninsular	FMC-1
Servicios Navieros Ecuatorianos S.A	FMC-1
Omega Lines	FMC-1
Orient Overseas Line	FMC-75, 84, 86, 87, 88, 89, 91, 94, 95, 96, 110
Orion International Inc	FMC-1
Overland Marine Pvansport Inc	FMC-6
Overocean Transport Corp	FMC-2
Pacific European Container Service	FMC-2
Pacific Far East Line	FMC-91, 92
Paper Transport Company	FMC-1
Pescadora Mavel, S.A	FMC-1
Pony Sea Lines S.A	FMC-2
Port Service Inc	FMC-1, 2
prudential Lines Inc	FMC-39, 44, 45, 49, 51
Puritan International Corp	FMC-1, 2
Quast & Company Inc	FMC-1
RHW	FMC-1
Road & Sea Transportation Services Inc	FMC-1
Roco World Wide Inc	FMC-1
Santo Domingo Express Inc	FMC-1
Saudi-American World Logistics	FMC-1
Sea Com Charter Carrier	FMC-3, 4
Sea Rail	FMC-2
Sea-Van Freight Services Inc	FMC-1
Seaway Express Lines	FMC-6, 7
Shipping Time Inc	FMC-1
Skinner Container Service	FMC-1
Skylift International Inc	FMC-1
Spanish North America Line (Lineas Maritimas Valencianas)	FMC-1
Suh Jin Shipping Company Ltd	FMC-1
Target Lines	FMC-1
Taylor Corporation Ltd	FMC-1
Trans Cargo Transport	FMC-1, 2, 3, 4
Trans-Freight Inc	FMC-1
Traffic Specialists International Inc	FMC-2
Trans-Globe Shipping (Japan) Ltd	FMC-2
Transmodal Container Service	FMC-1
Transocean Marine, Inc	FMC-1
Trans Sea Container Cargo Inc	FMC-1
Tropicargo S.A	FMC-1
Van-Cargo International	FMC-1
Vanleigh Transport Corp	FMC-1
Vemsa Line	FMC-1
Waterside Ocean Navigation Company Inc	FMC-1
World Freight Ltd	FMC-1
World Shipping Agency & Brokerage Inc	FMC-1
World Trade Transport Inc	FMC-1
Yamashita-Shinnihon Steamship Company Ltd	FMC-36

Ro-Lo Pacific Line has eight tariffs on file with the Commission. Although the Notice of this proceeding only mentioned one publication, all eight should have been listed. The Commission has reason to believe that Ro-Lo has ceased common carrier operations by evidence of their failure to amend any of their tariffs, the return by the postal service of the Notice in this proceeding and Ro-Lo's failure to file its annually required Anti-Rebate Certificate. All Ro-Lo tariffs, FMC-1, 2, 3, 4, 5, 6, 7, 8 are considered abandoned and are hereby cancelled.

Similarly, AECL Corporation, The Daiwa Navigation Co., Ltd., Eurofreight Ltd., Flo Trin Lines Inc., TC Container Corp., and T E C Lines Ltd., have additional tariffs to those listed in the Notice commencing this proceeding. Like Ro-Lo, these carriers did not respond to the Notice and are presumed to be no longer offering services under all of their respectively filed tariff publications. All of the tariffs of these carriers are hereby cancelled.

AECL Corporation	FMC-1, 2
The Daiwa Navigation Co., Ltd	FMC-13, 14, 15, 16, 17, 18, 19, 20, 21, 22
Eurofreight Ltd	FMC-1, 2
Flo Trin Lines Inc	FMC-1, 2, 3
TC Container Corp	FMC-2, 3
T E C Lines Ltd	FMC-7, 8

Daniel J. Conners,

Director, Bureau of Tariffs.

[FR Doc. 82-27242 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2115]

Alpha International Shipping (Jan-Peter Jueterbock, d.b.a.); Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Alpha International Shipping (Jan-Peter Jueterbock, dba), 366 W. 131st Street, Los Angeles, CA 90061 was cancelled effective September 17, 1982.

By letter dated August 27, 1982, Alpha International Shipping (Jan-Peter Jueterbock, dba) was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2115 would be automatically revoked unless a valid surety bond was filed with the Commission.

Alpha International Shipping (Jan-Peter Jueterbock, dba) has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2115 be and is hereby revoked effective September 17, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 2115 issued to Alpha International Shipping (Jan-Peter Jueterbock, dba) be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Alpha International Shipping (Jan-Peter Jueterbock, dba).

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-27243 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1424]

Atlantic Export Company (Paul F. Durkin, d.b.a.); Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Atlantic Export Company (Paul F. Durkin, dba), 15 Broad Street, Boston, MA 02109 was cancelled effective September 17, 1982.

By letter dated August 17, 1982, Atlantic Export Company (Paul F. Durkin, dba) was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1424 would be automatically revoked unless a valid surety bond was filed with the Commission.

Atlantic Export Company (Paul F. Durkin, dba) has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1424 be and is hereby revoked effective September 17, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1424 issued to Atlantic Export Company (Paul F. Durkin, dba) be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal**

Register and served upon Atlantic Export Company (Paul F. Durkin, dba).

Albert J. Klingel, Jr.

Director, Bureau of Certification and Licensing.

[FR Doc. 82-27224 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1951]

Dahill Moving and Storage Company, Inc.; Order of Revocation

On September 3, 1982, Dahill Moving and Storage Company, Inc., 602 Coney Island Avenue, Brooklyn, NY 11218 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 1951.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1951 issued to Dahill Moving and Storage Company, Inc., be revoked effective September 3, 1982 without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1951 issued to Dahill Moving and Storage Company, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Dahill Moving and Storage Company, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-27245 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1911]

GSC Charter and Shipping Agency, Inc.; Order of Revocation

On September 7, 1982, GSC Charter and Shipping Agency, Inc., 15 Exchange Place, Suite 715, Jersey City, NJ 07302 surrendered its Independent Ocean Freight Forwarder License No. 1911 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1911 issued to GSC Charter and Shipping Agency, Inc. be revoked effective September 7, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon GSC Charter and Shipping Agency, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-27246 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916(75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

McHue Freight Forwarding, Inc., 1624 Cohasset, Cincinnati, OH 45230; 513/381-4752.
Officers: James M. Huegel, President; Edwin J. Broschart, Secretary/Treasurer; Joan M. Broschart, Vice President.

Macargo, Inc., 9090 N.W. South River Dirve, Miami, FL 33166.
Officer: Estrella Gonzalez, President/Sole Stockholder.

Tropical Customs Brokers, Inc., 2537 N.W. 72nd Avenue, Miami, FL 33122.
Officers: Jose M. Meyer, President/Director; Fernando Mieres, Miriam D. Pollard, and B. Durwoor McGahee, Stockholders.

CIC International Forwarding, Inc., 8000 N.W. 56th Street, Miami, FL 33166.
Officer: Carlos E. Infante, President/Sole Stockholder.

Bostrum-Warren, Inc. (California), 110 West Ocean Blvd., Long Beach, CA 90802.
Officers: Robert A. Warren, President; Wayne Burham, Executive Vice President; Oscar Zaldivar, Vice President/General Manager; Mark Williams, Vice President; Douglas B. Bostrum, Secretary/Treasurer.

Jose Regil-Martinez 3130 Charing Cross Road Glendale, CA

Andrew Buchanan Rogers, 32 Vendue Range, Suite 200, Charleston, SC 29401.

Universal Express North America, Inc., 16515 Hedgecroft, Suite 306, Houston, TX 77060.
Officers: James Michael Terry, President/Director; Joseph Ruggle, Director/Stockholder; William Toedtli, Stockholder.

Locher Evers International, Inc., 600 1st Avenue, Suite 552, Seattle, WA 98104.
Officers: Jeffrey J. Greenwood, Vice President; Manfred H. Rodenkirchen, President; Bruno R. Locher, Chairman/Secretary/Treasurer.

Morrison Express Corporation, 5240 West 111 Street, Los Angeles, CA 90045.
Officers: Nelson Y. Shao, Chairman/Stockholder; C. S. Chen, and Jackson C. Chi, President/Stockholders.

Chem Group, Inc., 30 Lincoln Plaza, Suite 25M, New York, NY 10023.
Officers: Carl N. Hellman, President/Director/Treasurer; Martin Schneider, Vice President/Secretary; Debra Hellman, Director/Stockholder; Ellen Hellman, Stockholder.

Dated: September 29, 1982.

By the Federal Maritime Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 82-27247 Filed 10-1-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alpine Bancorp, Inc.*, Glenwood Springs, Colorado; to acquire direct control of the voting shares or assets of Alpine Bank, Glenwood Springs; Valley Bank & Trust, Eagle; Basalt Bancorp, Inc., Basalt; and Snowmass Bancorp, Inc., Snowmass Village, all of Colorado. Comments on this application must be received not later than October 27, 1982.

B. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent

of the voting shares or assets of Texas Commerce Bank-West Oaks, N.A., Houston, Texas, a proposed new bank. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than October 27, 1982.

Board of Governors of the Federal Reserve System, September 27, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27150 Filed 10-1-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reseve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation,* Summit, New Jersey; to acquire 100 percent of the voting shares of Ocean County National Bank, Point Pleasant, New Jersey. Comments on this application must be received not later than October 27, 1982.

B. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Texas American Bancshares Inc.,* Fort Worth, Texas; to acquire 100 percent of the voting shares or assets of Citizens National Bank of Temple, Temple, Texas. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than October 28, 1982.

Board of Governors of the Federal Reserve System, September 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27155 Filed 10-1-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorp, Inc.,* Richwood, West Virginia; to become a bank holding company by acquiring 80 percent or more of the voting shares of Peoples Bank of Richwood Inc., Richwood, West Virginia. Comments on this application must be received not later than October 27, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Bancshares of Canton, Inc.,* Canton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank & Trust Company, Canton, Illinois. Comments on this application mut be received not later than October 27, 1982.

c. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Hub Financial Corporation,* Helena, Montana; to become a bank holding company by acquiring 80 percent of the voting shares of Valley Bank of Helena, Helena, Montana. Comments on this application must be received not later than October 27, 1982.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Associated Bank Shares Corporation,* Colorado Springs, Colorado, to become a bank holding company by acquiring 25 percent of the voting shares of Citizens National Bank, Colorado Springs, Colorado. Comments on this application must be received not later than October 27, 1982.

2. *Commercial Bankstock, Inc.,* Oklahoma City, Oklahoma, to become a bank holding company by acquiring 87.14 percent of the voting shares of Commercial Bank, N.A., Oklahoma City, Oklahoma. Comments on this application must be received not later than October 27, 1982.

3. *First State Bancorp, Inc.,* Pittsburg, Kansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First State Bank and Trust Company, Pittsburg, Kansas. Comments on this application must be received not later than October 27, 1982.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *PNB Financial Group,* Newport Beach, California; to become a bank holding company by acquiring 100 percent of the voting shares of Pacific National Bank, Newport Beach, California. Comments on this application must be received not later than October 27, 1982.

2. *SDNB Financial Corp.,* San Diego, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Diego National Bank, San Diego, California. Comments on this application must be received not later than October 27, 1982.

F. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Hanil Bank,* Seoul, Korea; to become a bank holding company by acquiring 82.69 percent of the voting shares of First State Bank of Southern California, Lynwood, California. This application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Comments on this application must be received not later than October 27, 1982.

Board of Governors of the Federal Reserve System, September 27, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27151 Filed 10-1-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Maynard Savings Bancshares,* Maynard, Iowa; to become a bank holding company by acquiring 83.6 percent or more of the voting shares of Maynard Savings Bank, Maynard, Iowa. Comments on this application must be received not later than October 28, 1982.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Freeburg Bancorp, Inc.,* Freeburg, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Freeburg, Freeburg, Illinois. Comments on this application must be received not later than October 28, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Timpson Financial Corporation,* Timpson, Texas; to become a bank holding company by acquiring 80 percent or more of the voting shares of First State Bank, Timpson, Texas. Comments on this application must be received not later than October 28, 1982.

Board of Governors of the Federal Reserve System, September 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27153 Filed 10-1-82; 8:45 am]

BILLING CODE 6210-01-M

Proposed Acquisition of Exchange Bancorporation, Inc.; NCNB Corporation

NCNB Corporation, Charlotte, North Carolina, has applied for the Board's approval under sections 3(a)(5) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5) and 12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to acquire, through a subsidiary, 100 percent of the voting shares of Exhange Bancorporation, Inc., Tampa, Florida, and thereby indirectly acquire, under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)), 100 percent of the voting shares of Exchange Bank and Trust Company of Florida, Tampa, Florida; Exchange Bank of Charlotte County, N.A., Englewood, Florida; Exchange Bank of Collier County, Naples, Florida; The Exchange National Bank of Lake County, Clermont, Florida; Exchange Bank of Lee County, Fort Myers, Florida; Exchange National Bank of Manatee County, bradenton, Florida; The Exchange Bank of Osceola, Kissimmee, Florida; Exchange Bank of Polk County, Winter Haven, Florida; and Exchange Bank of Sarasota County, Sarasota, Florida, and thereby also indirectly acquire, under section 4(c)(8) of the Act and section 225.4(b)(2) of the Board's Regulation Y, Exchange Financial Services, Inc., Tampa, Florida; Exchange Leasing, Inc., Tampa, Florida; Exchange Travel Service, Inc. (inactive); and Exchange Operating Services Corporation (inactive).

In addition to the factors considered under § 3 of the Act (banking factors), the Board will consider the proposal in light of the company's nonbanking activities and the provisions and prohibitions in § 4 of the Act (12 U.S.C. 1843).

Applicant states that following its indirect acquisition of Exchange Financial Services, Inc. and Exchange Leasing, Inc., those subsidiaries would continue to engage in the activities of acting as an agent for the sale of credit life and credit accident and health insurance relating to extensions of credit made by their affiliates, and in leasing activities. These activities would be performed from the offices of Exchange Financial Services, Inc. and Exchange Leasing, Inc., both in Tampa, Florida, and the geographic areas to be served are, in the case of the insurance agency activities, Hillsborough, Pinellas, Pasco, Charlotte, Collier, Lake, Lee, Manatee, Osceola, Polk, and Sarasota Counties in Florida, and in the case of the leasing activities, the State of Florida. Such activities have been specified by the Board in § 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 § 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 Richmond.

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 October 28, 1982.

Board of Governors of the Federal Reserve System, September 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27154 Filed 10-1-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Advisory Board on Child Abuse and Neglect; Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, of the meeting of the Advisory Board on Child Abuse and Neglect on October 21, 1982, from 9:00 a.m. to 4:30 p.m., Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW., Washington, D.C.

The Advisory Board on Child Abuse and Neglect was established by the Department of Health and Human Services to assist the Secretary in coordinating programs and activities related to child abuse and neglect planned, administered, or assisted by the Federal agencies whose representatives are members of the Advisory Board. The Advisory Board shall also assist the Secretary in the development of Federal standards for child abuse and neglect prevention and treatment programs and projects.

At this meeting, the Advisory Board will discuss the FY 1983 Child Abuse and Neglect Program Plans; a Coordination Plan; the Annual Report to the Secretary; the Sixth National Conference on Child Abuse and Neglect; Federal Standards for Child Abuse and Neglect Prevention and Treatment Programs; and Guidelines for State Child Abuse and Neglect Reporting Legislation.

Further information on the Advisory Board meeting may be obtained from Ms. Arlene Taylor, National Center on Child Abuse and Neglect, Room 2008E, Donohoe Building, P.O. Box 1182, Washington, D.C. 20013. Telephone number is (202) 245-2840.

Advisory Board meetings are open for public observation.

Dated: September 29, 1982.

Mamie J. Welborne,

Human Development Services, Committee Management Officer.

[FR Doc. 82-27271 Filed 10-1-82; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-82-1171]

Notice of Administrative Proceedings

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Interstate Land Sales Registration, HUD.

ACTION: Notice of proceedings and opportunity for hearing.

SUMMARY: The Office of Interstate Land Sales Registration gives public notice of its attempt to serve upon certain persons (defined by statute [15 U.S.C. 1701] as individuals, unincorporated organizations, partnerships, associations corporations, trustee or estates) at their last know addresses, a notice requiring revisions to their Statement of Record. Service of this notice was attempted by certified mail and was found to be undeliverable. Therefore, in accordance with 44 U.S.C. 1508, the Department is publishing this Notice of Proceedings and Opportunity for Hearing in order to effect constructive notice upon the person listed in the attached Appendix.

DATE: Requests for hearings should be filed on or before October 19, 1982.

ADDRESSES: Requests shall be filed with the Docket Clerk for Administrative Proceeding, Room 10251, HUD Building, 451 Seventh Street, SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTRACT: Christopher Peterson, Director, Land Sale Enforcement Division, Department of HUD, Room 4116, Washington, D.C. 20410 Telephone: (202) 755-5989. (This is not a toll-free number.)

SUPPLEMENTAL INFORMATION: The Notice of Proceedings and Opportunity for Hearing is issued pursuant to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1706(d) and related regulations at 24 CFR 1710.45(b)(1) and 24 CFR 1720.220). The Department hereby serves the following Notice of Proceedings and Opportunity for Hearing to the persons listed in the attached Appendix:

Notice of Proceedings and Opportunity for Hearing

I

Docket No.
In the matter of (subdivision) _____
_____
(Developer) _____
_____
_____, Representative or Respondent.
OILSR No.——. _____

The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701 et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of ——— and has its principal office in ———.

B. The mailing address of Respondent's last know principal office or place of business is ———.

C. The Respondent filed a Statement of Record and Property Report for the above subdivision, located in ——— County, , which Statement of Record and Property Report, as amended, if any amendments have been filed, became effective on ——— and is still effective.

D. ——— is Representative of Respondent.

(Information for completing the above format follows. The captioned matters in the Appendix are lasted alphabetically by subdivision in each State. Paragraph I of the Notice of Proceedings and Opportunity for Hearing includes the captions of the separate matters. Information for the completion of the captions of each of the matters is set out in columns 1 and 2 of the aforementioned Appendix. Information for Lines A, B and C above is set out in columns 3, 4 and 5 respectively of the Appendix. Information for Line D of paragraph I is contained in the caption of the matter, and the same information is supplied in the last line of column 1 of the Appendix. The entire Notice is completed by inserting the applicable information from the Appendix in the appropriate blanks of paragraph I. In this form it is constructively notice that the Notice of Proceedings and Opportunity for Hearing is served upon the persons listed in column 1 of the Appendix.)

II

The Office of Interstate Land Sales Registration (OILSR) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above include untrue statements of material fact, or omit to state material facts required to be stated therein or necessary to make statments therein not misleading, to wit:

The developer has failed to file amendments to comply with revised regulations of the Office of Interstate Land Sales Registration or, alternatively, to file documentation establishing that no such amendments are necessary by the time required in 24 CFR 1730.100(b) (3), (4) and (5).

III

In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV

If the Respondent desires a hearing, he shall file a request for hearing accompanied by an answer within 15 days after service of this Notice of Proceedings. Respondent is hereby notified that if he fails to file a response pursuant to 24 CFR 1720.240 and 1720.245 within 15 days after service of

this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an order suspending the Statement of Record will be issued. The said order shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the order shall cease to be effective.

V

Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the Docket Clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410. All such papers shall clearly identify the type of matter and the docket number as set forth in this Notice of Proceedings.

VI

It is hereby ordered that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before an Administrative Law Judge, HUD Building, 451 Seventh Street, S.W., Washington, D.C. 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or a designee may fix by further order.

This Notice of Proceeding shall be served upon the Respondent pursuant to 24 CFR 1720.170 and/or 44 U.S.C. 1508.

Dated: September 27, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

APPENDIX

1	2	3	4	5
In the matter of (subdivision) developer, representative and title; respondent	OILSR Number and land sales enforcement division docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
Arkansas				
Beaver Shores, Beaver Shores, Inc., W. C. Case, President.	0-00164-03-6, 80-36-IS	Arkansas; Rogers, AR	Route 5, P.O. Box 715, Rogers, AR 72756.	Benton Co., AR, Feb. 8, 1972.
Hidden Valley Estates, Great American Development Corp., Wilbur Ramsey, President.	0-00280-03-8, 81-149-IS	Arkansas; Hardy, AR	P.O. Box 221, Hardy, AR 72542	Sharp Co., AR, June 9, 1972.
California				
Rancho Santo Rosa, C. A. Brown, President	0-02691-04-39, 81-114-IS	California; Alhambra, CA	1000 South Freemont Avenue, Alhambra, CA 91802.	Ventura Co., CA, July 13, 1978.
Florida				
Brevard Properties, Brevard Investment Properties, Frederick T. Hyman, President.	0-00149-09-43, 81-258-IS	Florida; Miami Beach, FL	1674 Meridian Avenue, Miami Beach, FL 33139.	Brevard Co., FL, May 11, 1972.
Central Lake Estates, Atgar Development Corporation, Guy B. Bailey, President.	0-01420-09-403, 82-38-IS	Florida; Miami, FL	1000 Brickelly Avenue, Miami, FL 33161.	Polk Co., FL, Dec. 30, 1970.
South Lake Wales, Atgar Development Corporation, Jack Klear, President.	0-01824-09-539, 81-241-IS	Florida; Miami Beach, FL	350 Lincoln Road, Miami Beach, FL 33139.	Polk Co., FL, May 21, 1975.
Georgia				
Montego Point, Montego Point Inc., Daniel P. Matheny, President.	0-04167-10-98, 82-227-IS	Georgia; Augusta, GA	610 1st National Bank Bldg., Augusta, GA 30902.	Lincoln Co., GA, Apr. 2, 1976.
Indiana				
Normandy Farms, Normandy Farms Development Company, John Kleinops, General Partner.	0-04797-15-12, 81-280-IS	Indiana; Indianapolis, IN	8078 Conarroe Road, Indianapolis, IN 46278.	Marion Co., IN, June 15, 1977.
Massachusetts				
Greenwood, Greenwood Development Corporation, Anthony P. Gargiulo, President.	0-03702-25-41, 81-287-IS	Massachusetts; Cambridge, MA.	678 Massachusetts Avenue, Cambridge, MA 02139.	Barnstable Co., MA, May 11, 1979.
Mississippi				
Hidden Valley Lakes, Hidden Valley Lakes, Inc., Jack Lacy, President.	0-01787-28-34(A), 81-252-IS.	Mississippi; Coldwater, MS	315 Main St., Senatobia, MS 38668	Tate Co., MS, Apr. 8, 1975.
Marsh Island Parts 1-4, et Lois, Marsh Land, Inc., Templeton Fowlkes, President.	0-05462-28-64-101, 81-170-IS.	Mississippi; Gulfport, MS	2nd Floor Hewes Bldg., Gulfport, MS 39501.	Jackson Co., MS, Feb. 14, 1979.
Retreat Village Subdivision, Biloxi River Retreat Village, Inc., James C. Smith, Nicholas Elliot, and Robert Zang, Directors.	0-04092-28-79, 81-54-IS	Mississippi; Gulfport, MS	P.O. Box 2361, Gulfport, MS 39501	Harrison Co., MS, Mar. 24, 1975.
North Carolina				
Carolina Forest, Russwood, Inc., Silas H. Russell, President.	0-01941-38-65, 82-54-IS	North Carolina; Montgomery, NC.	P.O. Box 25428, Charlotte, NC 28212	Montgomery Co., NC, Nov. 29, 1971.
Woodrun, Russwood, Inc., Silas H. Russell, President	0-01940-38-64&(A), 82-17-IS.	North Carolina; Montgomery, NC.	P.O. Box 25428, Charlotte, NC 28212	Montgomery Co., NC, Mar. 21, 1971.
Oklahoma				
Kirkwood Forest Island, Phase I, Greater Grand Lake Development Company, Inc., Frank M. Kirk, President.	0-04000-42-70, 81-232-IS	Oklahoma; Joy, OK	Box 391, Joy, OK 74346	Delaware Co., OK, May 29, 1975.
Texas				
Point Aquarius, The Bonanza Corporation, Jerry Thames, President.	0-02311-49-143(A), 81-205-IS.	Texas; Conroe, TX	1012 Cable Street, Conroe, TX 77301	Montgomery Co., TX, Apr. 25, 1974.
Tanglewood, Regency Financial Corporation, David Wylie, President.	0-05495-49-973, 81-221-IS	Texas; Houston, TX	1433 W. Loop South, Suite 140, Houston, TX 77027.	Brazoria Co., TX, Apr. 10, 1979.
Goose Island Lake Estates, South Coast Development Corporation, Joseph J. Gonlin, Jr., President.	0-04580-49-733, 81-275-IS	Texas; Rockport, TX	Box 459, Rockport, TX 78382	Aransas Co., TX, June 19, 1979.
Holiday Forest, River Road Enterprises, Inc., Billy R. Hicks, President.	0-03235-49-408, 81-319-IS	Texas; Huffman, TX	24025 Sunny Glen, Huffman, TX 77336.	Sabine Co., TX, Sept. 5, 1973.

APPENDIX—Continued

1	2	3	4	5
In the matter of (subdivision) developer, representative and title; respondent	OILSR Number and land sales enforcement division docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
Virginia				
Bull Run Mountain, Bull Run Development Corporation, Coleman C. Gore, Secretary-Treasurer.	0-00231-54-10, 81-305-IS	Virginia	1800 Ridge Road, Haymarket, VA 22069.	Prince William Co., VA, Dec. 30, 1969.
Royal View Estates, Loma Sales Company, Inc., Joseph S. Magnone, President.	0-01203-54-46, 81-314-IS	Virginia	750 South Dickerson St., Arlington, VA 22204.	Warren Co., VA Apr. 24, 1972.
Washington				
Lake Trask Timber Trails, Timber Trails, Inc., Raymond Kittleson, President.	0-04586-56-154, 81-262-IS	Washington; Brush Prairie, WA.	15619 N.E. Caples Rd., Brush Prairie, WA 98606.	Mason Co., WA June 2, 1978.
British Honduras				
Puerto Maya, Metroplex Properties, Inc., John Love, President and Director.	0-03618-60-122, 82-49-IS	Texas; Dallas, TX	4205 Buena Vista, Dallas, TX 75205	Corozal District, British Honduras, June 20, 1974.
Canada				
Parish of St. Hubert, City and District Development, Nick Brindalos, President.	0-02708-60-93, 81-265-IS	Quebec; Montreal, Quebec, Canada.	4521 Park Avenue, Suite 21, Montreal, Quebec, Canada.	St. Hubert Co., Canada, Dec. 26, 1972.
Mexico				
Sabalo Country Club, Sabalo Country Club, S. A., Juan Morquechjo Cazares, President.	0-03932-60-133, 82-51-IS	Mexico; Mazatlan, Sinaloa, Mexico.	P.O. Box 536, Mazatlan, Guadalajara, Mexico.	Mazatlan, Sinaloa, Mexico, Dec. 17, 1974.
West Indies				
Saline Point Golf Hill Ridge Becune, St. Lucia Limited—Cap Estates, Harry E. Nichols, Attorney.	0-03419-60-110, 81-177-IS	State of St. Lucia; St. Lucia, West Indies.	Cap Estates, St. Lucia, West Indies 20019.	Cap Estate Co., West Indies, Feb. 26, 1979.
Philippines				
B. F. Homes, B. F. Homes, Inc., Tomas B. Aguirre, Chairman of the Board.	0-05190-60-150, 82-33-IS	Republic of the Philippines; Manila, Philippines.	First B. F. Condominium Building, Intramuros, Manila, Philippines.	Municipalities of Paranaque, Las Pinas, Muntinlupa, Metro Manila, Province of Rizal, July 10, 1978.

[FR Doc. 82-27107 Filed 10-1-82; 8:45 am]

BILLING CODE 4210-27-M

New Community Development Corporation

[Docket No. D-82-683]

Regional Administrator and Deputy Regional Administrator; Redelegation of Authority

AGENCY: New Community Development Corporation, HUD.

ACTION: Redelegation of authority.

SUMMARY: This Redelegation of Authority authorizes the Regional Administrator and Deputy Regional Administrator, Region IX (San Franscisco) and the Area Manager and Deputy Area Manager, San Francisco Area Office, to exercise the authority of the General Manager, New Community Development Corporation, to transfer a parcel of federally-owned surplus land, together with any improvements and related personal property, to the Marin County Redevelopment Agency, Marin County, California.

EFFECTIVE DATE: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Angelo M. Scioscia, Director, Office of Surplus Land, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5182, Washington D.C. 20410; telephone 202/755-1862.

SUPPLEMENTARY INFORMATION: On September 24, 1980, at 45 FR 63360, the Secretary of the Department of Housing and Urban Development delegated the responsibility for management and disposition of surplus Federal property to the General Manager, New Community Development Corporation. The General Manager is redelegating this Authority in turn to the Regional Administrator, Deputy Regional Administrator, Region IX (San Francisco) and the Area Manager and Deputy Area Manager, San Francisco Area Office to expedite the transfer of the below listed parcel of Federally-owned surplus land to the Marin County Redevelopment Agency, Marin County, California.

Accordingly, the General Manager, New Community Development Corporation, redelegates to the Regional Administrator, Deputy Regional Administrator, Region IX (San Francisco) and the Area Manager and Deputy Area Manager, San Francisco Area Office, the authority to transfer the real property listed below, together with any improvements and related personal property, to the Marin County Redevelopment Agency, Marin County, California.

Lanham Act Housing.

Hamilton AFB, California (9D-CA-1046A)

(Sec. 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b; Delegation of Authority, September 24, 1980, 45 FR 63360)

Dated: September 27, 1982.

Warren T. Lindquist,

General Manager, New Community Development Corporation, Department of Housing and Urban Development.

[FR Doc. 82-27287 Filed 10-1-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-19329-A, F-19329-B]

Alaska Native Claims Selection

The Native village of Healy Lake was not listed in Sec. 11(b)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616) (1976) (ANCSA), as amended. However, on August 2, 1972, PLO 5242 withdrew lands including T. 13 S., R. 16 E., Fairbanks Meridian and T. 26 N., R. 5 E., Copper River Meridian, for Mendas Chā-Ag Native Corporation pursuant to Sec. 11(b)(3) of ANCSA, as amended, pending determination of eligibility.

On August 17, 1973, the village filed an application for determination of

eligibility as an unlisted village. This filing constituted a withdrawal of the remaining lands in the vicinity of Healy Lake pursuant to Departmental regulation 43 CFR 2651.2(a) (6) and (7).

On June 17, 1974, a Certificate of Eligibility was issued certifying the Native village of Healy Lake eligible for land benefits pursuant to Sec. 11(b)(3) of ANCSA.

On November 6, 1974, and December 3, 1974, Mendas Cha-Āg Native Corporation filed selection applications F-19329-A and F-19329-B, both as amended, under the provision of Sec. 12 of ANCSA, as amended, for the surface estate of certain lands in the vicinity of Healy Lake.

Mendas Cha-Āg Native Corporation, in its applications, excluded the following water bodies as being navigable:

Healy River (that portion upstream of Healy Lake);
Twelvemile Lake;
Black Lake; and
Moose Lake.

Because these water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(b)(3) and PLO 5242 and available for selection by the village pursuant to Sec. 12(a) of ANCSA, as amended.

Section 12(a) of ANCSA and Departmental regulation 43 CFR 2651.4 (b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries.

For these reasons, the water boundaries which were improperly excluded in the applications of Mendas Cha-Āg Native Corporation are considered selected.

As to the lands described below, the village selection applications, as amended, are properly filed and meet the requirements of ANCSA, as amended, 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 estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 62,493 acres, is considered proper for acquisition by Mendas Cha-Āg Native Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 4298, Lot 2, Alaska, situated on the east shore of Healy Lake.
Containing 59.49 acres.
U.S. Survey No. 3455, Lot 2, Alaska, situated on the southeasterly shore of Lake Healy adjoining U.S. Survey No. 3457.
Containing 0.96 acres.
U.S. Survey No. 4297, Alaska, situated on the right bank of Healy River approximately 7 miles east of Healy Lake, excluding Native allotment F-8123 Parcel C.
Containing approximately 30 acres.
Aggregating approximately 90 acres.

Fairbanks Meridian, Alaska (Surveyed)

T. 10 S., R. 15 E.,
Tract A, excluding:
U.S. Survey No. 3225;
U.S. Survey No. 4106A;
Native allotment F-8122;
Lot 1 of U.S. Survey No. 5402 and Native allotment F-8121;
Lot 2 of U.S. Survey No. 5402 and Native allotment F-8120;
U.S. Survey No. 3038;
U.S. Survey No. 5403 and Native allotment F-12000;
Lot 1 of U.S. Survey No. 5404 and Native allotment F-13080;
Lot 2 of U.S. Survey No. 5404 and Native allotment F-8123 Parcel B;
Lot 3 of U.S. Survey No. 5404 and Native allotment F-12213 Parcel A;
U.S. Survey No. 4298; and
Native allotment F-10301 Parcel B.
Containing approximately 20,950 acres.

T. 11 S., R. 15 E.,
Tract A, excluding:
Lot 3 of U.S. Survey No. 5404 and Native allotment F-12213 Parcel A;
Lot 2 of U.S. Survey No. 5404 and Native allotment F-8123 Parcel B;
U.S. Survey No. 4267;
U.S. Survey No. 3126;
U.S. Survey No. 5409 and Native allotment F-10301 Parcel A;
U.S. Survey No. 3456;
U.S. Survey No. 4256;
U.S. Survey No. 4276;
U.S. Survey No. 3454;
Tracts A and B of U.S. Survey No. 3459;
U.S. Survey No. 3455;
U.S. Survey No. 3457;
Lot 1 of U.S. Survey No. 5410 and Native allotment F-12213 Parcel C;
Lot 2 of U.S. Survey No. 5410 and Native allotment F-8123 Parcel A;
Native allotment F-9633 Parcel C;
Lot 3 of U.S. Survey No. 5410 and Native allotment F-10301 Parcel C;
Lot 4 of U.S. Survey No. 5410 and Native allotment F-9633 Parcel A;
State ADL's 58628, 53750, 58629, and 58562 (described as Tract B of ASLS 76-35);
Alaska State Land Survey No. 76-34, according to the survey plat recorded in the Fairbanks recording office on Januray 6, 1978 as plat No. 78-4 (patent No. 3717, ADL 58561);
Alaska State Land Survey No. 71-23, according to the survey plat recorded in the Fairbanks recording office on October 8, 1971, as plat No. 71-⊖09758 (patent No. 2635, ADL 52415);
Alaska State Land Survey No. 72-55, according to the survey plat filed in the Fairbanks recording office on January 19, 1979 as plat No. 79-7 (patent No. 4792, ADL 43354);
Tract A of Alaska State Land Survey No. 76-35, according to the survey plat recorded in the Fairbanks recording office on July 27, 1978 as plat No. 78-119 (patent No. 4149, ADL 58184);
Tract C of Alaska State Land Survey No. 76-35, according to the survey plat recorded in the Fairbanks recording office on July 27, 1978 as plat No. 78-119 (patent No. 4129, ADL 44565).
Containing approximately 18,598 acres.

T. 12 S., R. 15 E.,
Those portions of the township more particularly described as (portracted):
Secs. 1 and 12.
Containing approximately 1,280 acres.

T. 10 S., R. 16 E.,
That portion of Tract A more particularly described as (protracted):
Sec. 36, excluding U.S. Survey No. 4297 and Native allotment F-8123 Parcel C.
Containing approximately 605 acres.

T. 11 S., R. 16 E.,
Those portions of the township more particularly described as (protracted):
Secs. 1 to 5, inclusive;
Sec. 6, excluding lot 3 of U.S. Survey No. 5404 and Native allotment F-12213 Parcel A;
Sec. 7, excluding Alaska State Land Survey No. 73-94, according to the survey plat recorded in the Fairbanks recording office on March 14, 1974, as plat Serial No. 74-18 (patent No. 2295; ADL 50679);
Secs. 8 to 11, inclusive;
Sec. 17, excluding Native allotment F-15284 Parcel A;
Sec. 18;
Sec. 19, excluding U.S. Survey No. 5718, Native allotment F-033659 Parcel C, and Alaska Land Survey No. 72-37, according to the survey plat recorded in the Fairbanks recording office on April 18, 1974, as plat No. 74-26 (patent No. 2270, ADL-46652);
Sec. 20, excluding U.S. Survey No. 5718 and Native allotments F-033659 Parcel C, F-15284 Parcel A, and F-15283 Parcel C, F-15284 Parcel A, and F-15283 Parcel B;
Sec. 31.
Containing approximately 9,280 acres.

T. 12 S., R. 16 E.
Those portions of the township more particularly described as (protracted):
Secs. 6, 7, and 17;
Sec. 18, excluding U.S. Survey No. 5415 and Native allotments F-9633 Parcel B and F-8123 Parcel 4;
Sec. 19, excluding U.S. Survey No. 5415 and Native allotment F-8123 Parcel 4 and State ADL 58867;
Sec. 20;
Secs. 29 to 32, inclusive.
Containing approximately 6,279 acres.

T. 13 S., R. 16 E.
Those portions of Tract A more particularly described as (portracted):
Secs. 4 and 5;
Secs. 8 to 11, inclusive;
Sec. 14;

Sec. 15, excluding Native allotment F-9106 and F-010095;
Sec. 22, excluding U.S. Survey No. 5095B, U.S. Survey No. 4106, U.S. Survey No. 4106C, and Native allotments F-9106 and F-010195.

Containing approximately 5,004 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 26 N., R. 5 E.,
Sec. 30, excluding U.S. Survey No. 4297 and Native allotment F-8123 Parcel C;
Sec. 31.

Containing approximately 407 acres.

Aggregating approximately 62,403 acres.

Total aggregated acreage, approximately 62,493 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F-19329-EE.

All other water bodies not depicted as navigable on the attached maps, within the lands to be conveyed, were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reasons: Lands are no longer under Federal jurisdiction; or lands are under applications pending further adjudication. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)), as amended; and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), as amended, the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-19329-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: Travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed for a site easement are: Vehicle parking (e.g., aircraft, boats, ATV's snowmobiles, cars, trucks), temporary camping, loading or unloading. Temporary camping, loading or unloading shall be limited to 24 hours.

a. (EIN 5a D9, L) An easement for an existing access trail twenty-five (25) feet in width from Sec. 11, T. 11 S., R. 15 E., Fairbanks Meridian, on the west shore of Healy Lake southwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

b. (EIN 6 D9) A one (1) acre site easement upland of the ordinary high water mark in Sec. 12, T. 11 S., R. 15 E., Fairbanks Meridian, on Eagle Island in Healy Lake. The uses allowed are those listed above for a one (1) acre site.

c. (EIN 15 D1, L) An easement for an existing access trail twenty-five (25) feet in width from the Alaska Highway in Sec. 29, T. 13 S., R. 16 E., Fairbanks Meridian, northerly to Lake George. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement. The season of use will be limited to winter.

d. (EIN 23 C4) An easement for a proposed access trail twenty-five (25) feet in width from Healy Lake in Sec. 35, T. 10 S., R. 15 E., Fairbanks Meridian, northeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

e. (EIN 23a C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 35, T. 10 S., R. 15 E., Fairbanks Meridian, on the east shore of Healy Lake. The uses allowed are those listed above for a one (1) acre site.

f. (EIN 24 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 20, T. 11 S., R. 16 E., Fairbanks Meridian, on the south shore of Hidden Lake. The uses allowed are those listed above for a one (1) acre site.

g. (EIN 24a C5) An easement for a proposed access trail twenty-five (25) feet in width from site easement EIN 24 C4 on the south shore of Hidden Lake in Sec. 20, T. 11 S., R. 16 E., Fairbanks Meridian, southerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat, or supplemental plat, of survey confirming the boundary description and acreage of the lands hereinabove granted;

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 (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), as amended, any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), as amended, that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Mendas Chā-Āg Native Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 62,493 acres. The remaining entitlement of approximately 6,627 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate shall be issued to Doyon, Limited, when the surface estate is conveyed to Mendas Chā-Āg Native Corporation, and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village of Healy Lake shall be subject to the consent of Mendas Chā-Āg Native Corporation.

In accordance with Departmental regulation 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, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E as revised. However, pursuant to Pub. L. 96–487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 3, 1982 to file an appeal.

Any party known or unknown who 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 Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

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 obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are.

State of Alaska, Department of Natural Resources, Division of Research and Development, Pouch 7–005, Anchorage, Alaska 99510

Mendas Cha-Ag Native Corporation, P.O. Box 667, Delta Junction, Alaska 99737

Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701.

Barbara A. Lange,

Acting Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-27241 Filed 10-1-82; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material maybe obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: 43 CFR 4130.1, Grazing Application—Grazing Schedule
Bureau Form No.: 4130–1
Frequency: Annually
Description of Repondents: Permittees or lessees authorized to graze livestock on the public lands
Annual Response: 8,000
Annual Burden Hours: 2,000

Bureau clearance officer (alternate): Linda Gibbs 202–653–8853

James M. Parker,

Acting Director.

September 24, 1982.

[FR Doc. 82-27193 Filed 10-1-82; 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 82-61]

Upper Sonoran Draft Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of draft Environmental Impact Statement (draft EIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, BLM has prepared a draft EIS on the Proposed Wilderness Program for the Upper Sonoran EIS Area, Maricopa, Mohave, Yavapai, and Yuma Counties, Arizona.

The Proposed Action (Preferred Alternative) recommends as suitable for inclusion in the National Wilderness Preservation System all or portions of 11 wilderness study areas (WSAs). The total public land in the 11 areas is 259,245 acres. Seven total WSAs plus 173,962 acres of the above 11 are recommended as nonsuitable for wilderness designation for a total of 384,297 acres. The following table lists the WSAs and the total suitable and nonsuitable WSA acres.

There are four additional alternatives analyzed in the draft statement. They are: All Wilderness (18 WSAs, 643,092 acres), Enhanced Wilderness (12 WSAs, 373,905 acres), Limited Wilderness (4 WSAs, 135,900 acres), and No Wilderness (No Action).

PROPOSED ACTION

[BLM's preferred alternative]

Wilderness study area		Public land acres		
Number	Name	WSA	Suitable	Nonsuitable
2-37/43	Wabayuma Peak	36,730	11,145	25,585
2-53	Planet	12,765	0	12,765
2-54	Aubrey Peak	15,240	[1] 15,470	0
2-56	Black Mesa	17,010	0	17,010
2-58	Rawhide Mountains	62,300	17,600	44,700
2-59	Arrastra Mountain	113,650	111,650	2,000
2-60	Lower Burro Creek	22,300	[2] 22,520	0
2-62	Upper Burro Creek	27,390	0	27,390
2-68	Peoples Canyon	3,480	3,480	0
2-71	Buckskin Mountains	47,582	0	47,582
2-75	Harcuvar Mountains	74,778	0	74,778
2-83	Hassayampa River Canyon	21,900	0	21,900
2-95	Harquahala Mountains	73,875	26,780	47,095
2-99	Big Horn Mountains	22,337	21,500	837
2-100	Hummingbird Springs	67,680	15,900	51,780
2-135	Saddle Mountain	5,500	5,500	0
2-204	Black Mountains/Ives Peak	9,665	7,700	1,965
2-205	Tres Alamos	8,910	0	8,910
	Totals	643,092	259,245	384,297

[1] Public land (230 acres) outside the WSA are recommended suitable.
[2] Public land (220 acres) outside the WSA are recommended suitable.

SUPPLEMENTARY INFORMATION: BLM invites written comments on the draft EIS to be submitted within 60 days of its filing with the Environmental Protection Agency. Comments should be sent to the District Manager, Bureau of Land Management, EIS Projects Office, 2933 West Indian School Road, Phoenix, Arizona 85017.

A limited number of draft EIS copies may be obtained upon request to the District Manager at the above address.

Public reading copies may be reviewed at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th & C Streets, NW., Washington, D.C. 20240; telephone (202) 343–5717

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073; telephone (602) 261–3706

Phoenix District Office, Bureau of Land Management, 2929 W. Clarendon Avenue, Phoenix, Arizona 85017; telephone (602) 241–2501

BLM will receive oral and written comments at the formal public hearings to be held on November 3, 1982 in Kingman, Arizona and on November 4, 1982 in Phoenix, Arizona. The Kingman hearing will be held at 7:30 p.m. at the Mohave County Fairgrounds. The Phoenix hearing will be held at 7:30 p.m. at the County Board of Supervisors Auditorium, 205 West Jefferson.

A solicitor from the Department of the Interior will preside over the hearings. Witnesses presenting oral comments should limit their testimony to 10 minutes. Those wanting to testify should sent a written request to the District Manager, Bureau of Land Management, EIS Projects Office, 2933 West Indian School Road, Phoenix, Arizona 85107.

BLM will give written and oral comments on the draft EIS equal consideration during preparation of the final EIS.

Dated: September 27, 1982.

D. Dean Bibles,

State Director.

[FR Doc. 82-27172 Filed 10-1-82; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Handling of Insurance Filings

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: Effective October 1, 1982, all insurance filings made in accordance with 49 U.S.C 10927 and 49 CFR 1043 will be handled by the Commission's Office of the Secretary until further notice. Public inquiries concerning specific insurance filings should be directed to that office at (202) 275–1816 or 1817.

ADDRESS: Interstate Commerce Commission, Office of the Secretary, Room B–207, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Edward C. Fernandez or Gloris Stewart (202) 275–0783 or 0927.

DATED: September 28, 1982.

Agatha L. Mergenovich,

Secretary.

[FR Doc 82-27180 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387]

Motor Carriers; Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278 or Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number, and specifics	Review Bd.[1]	Decided date
282	Consolidated Rail Corp., ICC-CR-C-0159, (Cement).	2	Sept. 28, 1982.
285	Louisville and Nashville Railroad Co., et al., ICC-L&N-C-0039, (Newsprint).	2	Do.
288	The Kansas City Southern Railway Co., ICC-KCS-C-0025, (Mill feed).	2	Do.

[1]Review Board No. 2, Members Carleton, Williams, and Ewing.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27181 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations: any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 C.F.R. 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79937. By decision of August 2, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to Schuster Grain Company of Certificate No. MC–126489 (Sub-Nos. 25 and 31) issued July 8, 1976 and July 21, 1977, respectively, issued to Gaston Feed Transports, Inc. generally authorizing the transportation of (1) dry feed ingredients from named facilities in Hutchinson, KS, to CO, IL, IA, MN, MO, MT, NE, NM, ND, OK, SD, TX, WI and WY and (2) dog food (except in bulk) from Hutchinson, KS to AL, AR, CO, FL, GA, IL, IN, IA, LA, MS, MN, MO, NE, NM, ND, OH, OK, SD, TN, TX and WI. Representative is: Bradford E. Kistler, Attorney at Law, P.O. Box 82028, Lincoln, NE 68501.

MC–FC–79951. By decision of 8–4–82 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Add American Freight Service, Ltd., of Spring Valley, IL of Certificate No. MC–14277 (Sub-No. 3) issued to Chicago—Aurora Motor Service, Inc. of Aurora, IL, authorizing: general commodities (except classes A and B explosives), between points in MN, IA, MO, MI, WI, IL, IN, OH, and KY. Representative: Paul Maton, 27 E. Monroe St., Suite 1000, Chicago, IL 60603. TA lease is not sought. Transferee is not a carrier.

MC–FC–79962. By decision of August 5, 1982, issued under 49 CFR 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to SJW Enterprises, Inc., of Putnam Valley, NY, of Certificate No. MC–112718 issued August 18, 1977, to Westfair Transport Corp., of Stamford, CT, authorizing *general commodities* (with exceptions) between Norwalk, CT and New York, NY, serving all intermediate points and the off-route points of Riverside, Old Greenwich, Glenbrook, Springdale, Rowayton, South Norwalk, and New Canaan, CT: from Norwalk over U.S. Highway 1 to New York and return over the same route. *Motors* (except those which because of size and weight require the use of special equipment), and *vegetable oil*, between Stamford, CT and Boston, MA, serving the intermediate and off-route points of Worcester, Farmingham, Canton and North Easton, MA, for vegetable oil traffic only, as follows: from Stamford, CT over U.S. Highway 1 to New Haven, CT, then over U.S. Highway 5 to Springfield, MA (also from New Haven over Alternate U.S. Highway 5 and U.S. Highway 5 to Springfield), then over U.S. Highway 20 to junction MA Highway 9, and then over MA Highway 9 to Boston, MA and return over the same routes. From Stamford, CT over U.S. Highway 1 to New London, CT, then over CT Highway 95 to the CT–RI State line, then over RI Highway 95 to Hopkinton, RI, then over RI Highway 3 to Providence, RI, and then over U.S. Highway 1 to Boston, MA and return over the same route. Irregular routes: *General commodities* (with exceptions) between points in CT. Between New York, NY, on the one hand, and, on the other, points in Hudson, Essex, Passaic, Bergen, Morris, Union, Somerset and Middlesex Counties, NJ. *Electrical equipment*, (except those which because of size or weight require the use of special equipment), *telephone materials and patterns, and empty steel drums*. Between Stamford, CT, on the one hand, and, on the other, points in that part of New Jersey bounded by a line beginning at the Hudson River and extending along NJ Highway 4 to Patterson, NJ, then along unnumbered highway via Haledon, NJ to junction U.S. Highway 202 near Pequannock, NJ, then along U.S. Highway 202 to junction NJ Highway 28, then along NJ Highway 28 to Plainfield, NJ, then along a straight line drawn from Plainfield, NJ to Perth Amboy, NJ, then in a northerly direction along the eastern boundary line of NJ to point of beginning, including those on the indicated portions of the highways specified. Representative: Piken & Piken, 95–25 Queens Boulevard, Rego Park, NY 11374. Phone: (212) 275–1000. TA lease not sought. Transferee is not a carrier.

MC–FC–80017. By decision of September 2, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 3 approved the transfer to J.H. TRANSPORT, INC. of Stanton, MI, Certificate No. MC–57778 (Sub-No. 36F) issued to MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., of Southfield, MI, authorizing the transportation of foodstuffs, between points in MI, on the one hand, and, on the other, those points in IL on the north of U.S. Hwy 136 and those points in IN on and north of U.S. 40. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. TA lease is not sought. Transferee is not a carrier

MC–FC–80027. By decision of September 14, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Robert I. Putnam, d.b.a. OCEANSIDE MOVING & STORAGE, of Oceanside, CA, of Certificate No. MC 152170 issued December 11, 1981, to PUTNAM MOVING & STORAGE, INC., of Oceanside, CA, authorizing the transportation of used household goods, for the United States Government, incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between pints in the United States. Representative: Robert I. Putnam, 302 Via Del Norte, Oceanside, CA 92054.

MC–FC–80035. By decision of September 1, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Collings Freight Service, Inc., of Certificate No. MC–147900 (Sub-Nos. 1F, 2, 3F, 4, 5, 6 and 7X) issued December 17, 1980, June 10, January 27, April 22, August 12, August 26, and September 21, 1981, respectively, to COLLINS WHOLESALE SUPPLY, INC., doing business as COLLINS FREIGHT SERVICE, generally authorizing the transportation of (1) *cement, masonry, abrasive grit building materials, calcium carbonate, talc, wallboard, joint compound and materials, equipment and supplies* used in the manufacture and distribution of those commodities in CA, OR, WA, ID, NV and UT; and (2) *general commodities* with exceptions for the United States Government in the United States. Representative: Carl Collins, President, Collins Wholesale Supply, Inc., 4073 Hooker Rd., Roseburg, OR 97470.

MC–FC–80038. By decision of September 20, 1982, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to BAYSIDE EXPRESS, INC., of Santa Clara, CA, of Certificate of Registration No. MC–121839, issued to BAY-SAC EXPRESS, INC., of San Jose, CA, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificate of Public Convenience and Necessity granted by Decision No. 92195 dated September 3, 1980, issued by the Public Utilities Commission of the State of

California, transporting *general commodities* (with exceptions), between the following points, serving all intermediate points or within 20 miles of the highway: (1) points in San Francisco Territory; (2) San Francisco Territory and Santa Rosa via U.S. Hwy 101; (3) Santa Rosa and Napa via State Hwy 12; (4) Santa Rosa and Calistoga via various unnumbered county roads; (5) Calistoga and Vallejo via State Hwy 29; (6) San Francisco and Auburn via Interstate Hwy 80; (7) Yuba City and Fresno via State Hwy 99; (8) San Francisco Territory and Stockton via Interstate Hwys 580, 205, and 5; (9) San Francisco Territory and Paso Robles via U.S. Hwy 101; (10) Monterey and Salinas via State Hwy 68; (11) San Francisco Territory and Santa Cruz via State Hwy 17; (12) Richmond and Stockton via State Hwy 4; (13) Sunol and Martinez via Interstate Hwy 680; (14) Sacramento and Placerville via U.S. Hwy 50; (15) Nevada City and Jackson via State Hwy 49; and (16) Gilroy and junction with State Hwy 99 near Califa, via State Hwy 152, subject to the condition that prior to or concurrently with consummation of the transaction, applicants shall furnish to the Commission a certified copy of the California certificate as reissued to it, or if the California Public Utilities Commission does not reissue the certificate, a certified copy of the order which approved the transfer of the California intrastate certificate, together with a statement in writing confirming the date of consummation of the intrastate transaction. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111.

Note.—TA has been filed. Transferee is not a carrier but is affiliated with Al Cal Delivery, Inc., a carrier under MC–121781.

MC–FC–80039. By decision of September 16, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to Q P Transportation, Inc., of Kalamazoo, MI, of Permit No. MC–148269 (Sub-No. 1) issued August 13, 1980, to William F. Hicks, an individual, d/b/a/ HICKS TRANSPORT, of Eaton Rapids, MI, authorizing: (1) steel and steel products from points in MI, IL, IN, OH, TN, NY, WI, PA, MO, SC, NE, ID, and MN, to the facilities of Jacklin Steel Supply Company and Purvis Bros., Inc., at or near Lansing, Kalamazoo, Traverse City and Iron Mountain, MI, and (2) commercial and industrial stationary waste compactors and equipment for the foregoing, from the facilities of Quality Steel Fabricators, Inc., at or near Hopkins, MI, to points in the US (except AK and HI), under continuing contracts with Jacklin Steel Supply Company, Purvis, Bros., Inc., and Quality Steel Fabricators, Inc. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933, (517) 482-2400. TA lease is sought. Transferee is not a carrier.

MC–FC–80046. By decision of September 15, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to J. F. MORAN TRUCKING CO., INC., of Warwick, RI, of Certificate No. MC–158397 issued February 3, 1982 to J. F. MORAN COMPANY, INC., of Warwick, RI, authorizing the transportation of general commodities (except classes A and B explosives), between points in Rhode Island, on the one hand, and, on the other, Boston, MA. Representative: Robert A. Mega, 25 Esten Avenue, Pawtucket, RI 02860.

MC–FC–80049. By decision of September 22, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to PONY LINES, INC. of Certificate No. MC–119864 (Sub-No. 79) issued July 19, 1982 to CRAIG TRANSPORTATION CO., authorizing the transportation of such commodities as are dealt in or used by grocery and food business houses, drug stores and department stores, between those points in the United States east of ND, SD, CO and NM. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167.

MC–FC–80065. By decision of September 22, 1982, issued under U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the tranfer to McGillion Transport, Inc., of Bolton, Ontario, Canada, of Certificate No. MC–151088 (Sub-No. 1)X, issued to McGillion & Company, Limited, of Bolton, Ontario, Canada, authorizing the transportation to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, of *iron* and *steel articles*, between ports of entry on the International Boundary Line, between the United States and Canada, located in Michigan and New York, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Representative: Allan C. Zuckerman, 221 North LaSalle Street, Suite 826, Chicago, IL 60601.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27190 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP2-241]

Motor Carriers; Permanent Authority Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating right authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously notice in the **Federal Register.**

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.

Agatha L. Mergenovich,

Secretary.

MC 97642 (Sub-2) (republication), filed January 18, 1982, published in the **Federal Register** issue of February 19, 1982, and republished, this issue. Applicant: YOUNG TRUCKING, INC., P.O. Box 9197, Corpus Christi, TX 78408. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (718) 437–1768. A decision of the Commission, *Review Board 1*, decided April 28, 1982, and served May 12, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate of foreign commerce, over irregular routes, as a *common carrier*, by motor vehicle, transporting (1) *mercer commodities*, between points in Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas, on the one hand, and, on the other, points in the United States (except Hawaii), (2) *machinery and earth drilling commodities*, between points in Alabama, Arkansas, California, Georgia, Florida, Louisiana, Texas, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the United States, and (3) *iron and steel articles*, between points in Texas, Missouri, New Mexico, Oklahoma, and Louisiana; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to modify the commodities and territorial descriptions.

MC 148103 (Sub-1) (republication), filed January 18, 1982, published in the **Federal Register** issue of February 5, 1982, and republished, this issue. Applicant: BIG JOHN TRANSPORTATION COMPANY, 5805 Greenash, Houston, TX 77081. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713) 437–1768. A decision of the Commission,

Division 1, Acting as an Appellate Division, Commissioners Sterrett, Simmons, and Gradison, decided July 16, 1982, and served July 28, 1982, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *Common carrier*, by motor vehicle, over irregular routes, transporting (2) *machinery and earth drilling commodities*, between points in Alabama, Arkansas, California, Georgia, Florida, Louisiana, Texas, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the United States . . .; that applicant is fit, willing, and able properly to perform the service authorized and to conform to statutory and administrative requirements. The purpose of this republication is to clarify part (2) only.

MC 155733 (republication) filed December 29, 1981, published in the **Federal Register** issue of January 14, 1982, and republished this issue. Applicant: TRAIL BLASERS, INC., 7990 Overland Rd., Boise, ID 83709. Representative: Timothy R. Stivers, P.O. B. 1576, Boise, ID 83071, (208) 343–3071. A Decision of the Commission, *Division 1*, Acting as an Appellate Division, Commissioners Sterrett, Simmons, and Gradison, decided August 23, 1982, and served August 30, 1982, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irrregular routes, in the transportation of (1) *such commodities* as are dealt in by wholesale and retail grocery stores, between points in Arizona, California, Oregon, Utah, and Washington, on the one hand, and, on the other, points in Idaho, and (2) *food and related products*, between points in California, Idaho, Montana, Nevada, New Mexico, Texas, Utah, Washington, and Wyoming; that applicant is fit, willing, and able properly to perform the service authorized and to conform to statutory and administrative requirements. The purpose of this republication is to broaden the commodity and territorial descriptions.

MC 159673 (republication), filed March 22, 1982, published in the **Federal Register** issue of April 20, 1982, and republished this issue. Applicant: INLAND PUMPING AND DREDGING CORPORATION, P.O. Box 140, Downingtown, PA 19335. Representative: Dale R. Yeager, 388 Devon Dr., Exton, PA 19341, (215) 269–3900. A decision of the Commission, *Review Board No. 1*, decided June 21, 1982, and served July 6, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes, as a *common carrier*, by motor vehicle, transporting *hazardous waste materials*, between points in Burlington County, NJ, and Bucks County, PA, on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Tennessee, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut. Condition: This certificate shall expire 5 years from its date of issuance; that applicant is fit, willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication is to add "Burlington County, NJ" to the territorial description.

MC 160143 (republication), filed January 18, 1982, published in the **Federal Register** issue of February 19, 1982, and republished this issue. Applicant: BURL RATHMANN, d.b.a. 3-STAR TRANSPORTATION CO., 7403 Burleson Rd., Austin, TX 78744. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, (713) 437–1768. A Decision of the Commission, *Division 1*, Acting as an Appellate Division, Commissioners Sterrett, Simmons, and Gradison, decided July 16, 1982, and served July 28, 1982, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, transporting (2) *machinery, and earth drilling commodities*, between points in Alabama, Arkansas, California, Georgia, Florida, Louisiana, Texas, Oklahoma, and New Mexico, on the one hand, and, on the other, points in the United States; that applicant is fit, willing, and able properly to perform the service authorized and to conform to statutory and administrative requirements. The purpose of this republication is to clarify part (2) only.

[FR Doc. 82-27188 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are no allowed. Some of the applications may have been modified prior to publication 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.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where 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 the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

For the following, please direct status inquiries to Team 1, (202) 275–7992.

Volume No. OP1–167

Decided: September 24, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 161421 (Sub-1), filed September 21, 1982. Applicant: DAVID'S ECONOMOVE, INC., 210 Hillsboro St., Fayetteville, NC. Representative: Robert D. Koch, P.O. Box 614, Fayetteville, NC 28302, (919) 323–4513. Transporting for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 163680, filed September 2, 1982. Applicant: TRANSPORT AMERICA, INC., 808 S. Joliet St., Joliet, IL 60436. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Transporting *general commodities*, between Covel and Stanford, IL, on the one hand, and, on the other, points in the U.S. Condition: The certificate to be issued to the extent it authorizes the transportation of explosives, will be conditioned to expire 5 years from its date of issuance. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 2379.

Note.—The purpose of this application is to substitute motor carrier service for abandoned rail service.

MC 163941, filed September 21, 1982. Applicant: TROY TIGNER, d.b.a. T & L TRUCKING, N. 703 West Street, Chewelah, WA 99109. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055–3273, (206) 235–1111. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and othe soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163950, filed September 21, 1982. Applicant: B. F. LEWIS, d.b.a. B L MOTOR EXPRESS, 20403 County Rd. 15, Elk River, MN 55330. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 2 (202) 275–7030.

Volume No. OP2–237

Decided: September 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier (Member Chandler not participating).

MC 72423 (Sub-15), filed September 20, 1982. Applicant: PLATTE VALLEY FREIGHTWAYS, INC., 111 East Chestnut St., Sterling, CO 80751. Representative: Jack B. Wolfe, 601 East 18th Ave., Suite 107, Denver, CO 80203, 303–861–8046. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI), and (3) as a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163902, filed September 17, 1982. Applicant: TALMADGE DAVIS, 19906 E. 6th, Greenacres, WA 99016. Representative: Talamadge Davis (same address as applicant), 509–926–3279. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, betwen points in the U.S. (except AK and HI).

Volume No. OP2–240

Decided: September 24, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 163933, filed September 20, 1982. Applicant: B. L. ROMICK AND M. J. CAUKIN, d.b.a. R–C TRUCKING, 15232 Jefferson, Omaha, NE 68137. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501–2028, (402) 475–6761. Transporting *Food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the vehicle in such vehicle, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 3 at 202–275–5223.

Volume No. OP3–150

Decided: September 27, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 88414 (sub-6), filed September 16, 1982. Applicant: RICHMOND TRANSFER & STORAGE COMPANY, d.b.a. RICHMOND EXPORT SERVICES, 10154 Market Ave., Richmond, CA 94806. Representative: Thomas M. Loughran, 100 Bush St., 21st Floor, San Francisco, CA 94104, (415) 986–5778. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 146285, (Sub-8), filed September 14, 1982. Applicant: JIM CONNER ENTERPRISES, INC., Route 37 South, Benton, IL 62812. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

MC 163165 (Sub-1), filed September 16, 1982. Applicant: STEPHEN FORD FREY, 1560 Adelia Pl., Atlanta, GA 30329. Representative: Stephen Ford Frey (same address as applicant) (404) 634–9684. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163765, filed September 9, 1982. Applicant: SIG M. GLUKSTAD, INC., d.b.a. MIAMI INTERNATIONAL FORWARDERS, 3050 Biscayne Blvd., Suite 703, Miami, FL 33137. Representative: Leonard C. Roberts (same address as applicant) (305) 573–6026. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166834, filed September 13, 1982. Applicant: RICHARD C. HAZZARD, 904 West Monroe Street, Plant City, FL 33566. Representative: Frank L. Willard, Suite 1001, First & Merchants National Bank Building, Norfolk, VA 23510 (804) 627–0070. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *Agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 163835, filed September 14, 1982. Applicant: GORDON SANDS, INC., RD Box 150, Westerlo, NY 12193. Representative: Gordon Sands (same address as applicant) (518) 732–7223. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 163874, filed September 16, 1982. Applicant: BENTON MOVERS, LTD., 313 Stiles Ave., Savannah, GA 31401. Representative: Edward J. Benton, III (same address as applicant) (912) 233–4971. Transporting *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 4 at 202–275–7669.

Volume No. OP4–347

Decided: September 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 163726, filed September 7, 1982. Applicant: C.L.P., INC., 1800 N. 30th Ave., Melrose Park, IL 60160. Representative: Irwin D. Rozner, 134 North La Salle St., Chicago, IL 60602 (312) 782–6937. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 163857, filed September 15, 1982. Applicant: MAUI MOVING & STORAGE, INC., 609 Kaimalino Pl., Kailua, HI 96734. Representative: Alan F. Wholstetter, 1700 K St., NW Washington, DC 20006 (202) 833–8884. Transporting *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK).

MC 163926, filed September 20, 1982. Applicant: R & S TRANSPORTATION, INC. 3857 Miller Park Rd. Garland, TX 75040. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062 (214) 255–6279. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 5 at 202–275–7289.

Volume No. OP5–201

Decided: September 24, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 163829, filed September 13, 1982. Applicant: CUSTOM TRUCK BROKERS, INC. P.O. Box 10, Greensburg, PA 15601 Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219 (412) 471–1800. To operate as a *broker* in arranging for the transportation of *general commodities* (except household goods) between points in the U.S. (except HI).

MC 163838, filed September 14, 1982. Applicant: RONALD L. PETERS TRUCKING d.b.a. PETERS TRUCK LEASING, 704 Douglas St., Lakefield, MN 56150. Representative: Kenneth H. Price, Box 547, Lakefield, MN 56150, (507) 662–6686. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in MN, SD, IA, IL, CO, NE, WY, IN, and OH.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27182 Filed 10–1–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and, the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.— All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Notice No. F–205

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 134806 (Sub-1–41TA), filed: September 20, 1982. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East-West Highway, Suite 404, Bethesda, MD 20814. *Contract carrier:* irregular routes: *Floor mats* between Los Angeles, CA, on the one hand, and, on the other, Baltimore, MD, New York, Albany, and Pawling, NY, Philadelphia, PA, Dexter, ME, Boston, MA, and Hartford, CT, under continuing contract(s) with Eldo, INc., Los Angeles, Ca. Supporting shipper: Eldo, Inc., 2816 E. 11th Street, Los Angeles, CA 90023.

MC 163812 (Sub-1–TA), filed: September 20, 1982. Applicant: R. S. COUGHLAN, LTD., 103 MacFarlane Street, Fredericton, New Brunswick, CD E3A 1V5. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *Lumber and fencing* between points in the U.S. on the US/CD border east of the Mississippi River, on the one hand, and, on the other, points in the U.S. east of the Mississippi River under continuing contract(s) with Devon Lumber Company, Ltd. of Fredericton, New Brunswick, CD. Supporting shipper: Devon Lumber Company, Ltd., 200 Gibson Street, Fredericton, New Brunswick, CD E3A 4E3.

MC 128798 (Sub-5–TA), filed: September 20, 1982. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Road, Larchmont, NY 10438.

Representative: Larsh B. Mewhinney, Esq., Moore, Berson, Lifflander & Mewhinney, 555 Madison Avenue, New York, NY 10022. *Contract carrier:* irregular routes: *General commodities (except Class A and B explosives, commodities in bulk, and household goods as defined by the Commission)* between points in the U.S . (except AK and HI) under continuing contract(s) with Purex Corporation, Lakewood, CA. Supporting shipper: Purex Corp., 5101 Clark Avenue, Lakewood, CA 90712.

MC 150909 (Sub-1–2TA), filed: September 20, 1982. Applicant: ROBERT B. AND REGINALD L. HEBERT d.b.a., HEBERT BROS. Route 1, Madawaska, ME 04756. Representative: John C. Lightbody, Esq. Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *Automotive parts and supplies* between Wilmington, MA, on the one hand, and, on the other, Fort Kent and Madawaska, ME, under continuing contract(s) with NAPA New England of Wilmington, MA. Supporting shipper: NAPA New England, 840 Woburn Street, Wilmington, MA 01887.

MC 163899 (Sub-1–1TA), filed: September 17, 1982. Applicant: L & M TRANSPORTATION, INC., 2 Inverness Circle Fairport, NY 14450. Representative: Norman A. Cooper, 145 W. Wisconsin Avenue, Neenah, WI 54956. *Furniture or fixtures and equipment, materials and supplies,* between Wayland, NY, on the one hand, and, on the other, Dallas, TX, and Whittier, CA. Supporting shipper: The Gunlocke Co., Inc., 11385 S. Lackawanna Street, Wayland, NY, 14572.

MC 159220 (Sub-1–2TA), filed: September 20, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara Street, Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th Street, N.W., Suite 800, Washington, D.C. 20036. *Contract carrier:* iregular routes: *General commodities (except Classes A and B explosives, commodities in bulk, and household goods)* between points in the U.S., under continuing contract(s) with S. M. Flickinger Co., Inc. of West Seneca, NY. Supporting shipper: S. M. Fickinger Co., Inc., 45 Azalea Drive, P.O. Box 68, Buffalo, NY 14240.

MC 163936 (Sub-1–1TA), filed: September 21, 1982. Applicant: JAMES ALLAN d.b.a. ROYAL GUARDSMAN LIMOUSINE SERVICE, INC., 15 Elizabeth Street, West Millington, NJ 07946. Representative: James Allan, (same as applicant). *Passengers and their baggage* between points in NJ, New York City, NY, CT, and PA. Supporting shipper: Tec Instruments, Inc., 21 Elizabeth Street, West Millington, NJ 07946; Rahn Studio, Route 202, Far Hills, NJ 07931.

MC 163953 (Sub-1-1TA) filed: September 22, 1982. Applicant: 248356 LEASING INC., 108 Annabelle Street, Hamilton, Ontario, CD L9C 3T6. Representative: William J. Hirsch P.C., 64 Niagara Street, Buffalo, NY 14020. *Lumber and lumber products and materials, equipment and supplies used in the manufacture and distribution thereof,* from ports of entry on the International Boundary Line between the U.S. and CD, located in NY and MI, to points in CT, DE, IL, IN, KY, MA, MD, ME, MI, NJ, NY, OH, PA, RI, TN, VA, VT, WV and WI. Supporting shipper: Champion International Corporation Ltd., 1 Champion Plaza, Stamford, CT 06921.

MC 152320 (Sub-1–5TA), filed September 17, 1982. Applicant: VERSPEETEN CARTAGE LIMITED, 67 Dalton Road, Delhi, Ontario, CD N4B 1B4. Representative: Neill T. Riddell, 900 Guardian Building, Detroit, MI 48226. *Contract carrier:* irregular routes: *Machinery, metal products and transportation equipment* between all points in the U.S. under continuing contract(s) with DeCloet Limited, Hover Ball and Bearing Company (Canada) Limited, Manchester Tank Canada Limited and Mastico Industries Limited, all of Tillsonburg, Ontario, Canada. Supporting shipper(s): Hover Universal of Canada, 100 Town Line Road, Tillsonburg, Ontario, CD N4G 2R7; Mastico Industries Limited, 73 Goshen Street, Tillsonburg, Ontario, CD; Manchester Tank Canada Limited, 105 Spruce Street, Tillsonburg, Ontario, CD N4G 4J1; DeCloet Limited, Highway 3 East, P.O. Box 145, Tillsonburg, Ontario, CD N46 4H3.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, NE., Atlanta, GA 30309.

MC 151407 (Sub-3–6TA), filed September 22, 1982. Applicant: T & T TRUCKING, INC., 274 N.W. 37th Street, Miami, Florida, 33127. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, Texas 75245. *Marine Accessories* between Dade and Pinellas Counties, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: K G S Marine, Inc., 16110 N.W. 13th Avenue, Miami, Florida 33169.

MC 163853 (Sub-3–1TA), filed September 22, 1982. Applicant: SILVERMAN COMPANY, 48 Swannanoa River Road, Asheville, NC 28805. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. *Coal* between points in AL, FL, GA, IN, KY, MI, NC, OH, SC, TN and VA. Supporting shipper(s): Concoal Corporation, P.O. Box 767, Knoxville, TN 37901.

MC 119917 (Sub-3–16TA), filed September 22, 1982. Applicant: DUDLEY TRUCKING COMPANY, INC., 724 Memorial Drive S.E., Atlanta, GA 30316. Representative: David A. Modlinski, (same address as above). *Tires and Tubes,* between AL, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, WV. Supporting shipper: Kumho U.S.A., Inc., One Penn Plaza, New York, New York 10119.

MC 163734 (Sub-3–1TA), filed September 22, 1982. Applicant: VER–HU, INC., Main St. P.O. Box 38, Ducktown, TN 37326. Representative: Keith J. Verner (same address as applicant). *General commodities* between points in Polk County, TN, and Fannin County, GA, on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting shipper: Mineral Bluff Stone Company, Route No. 1, Box 292, Mineral Bluff, GA 30552. Apache Blast Company, P.O. Box 428, Copperhill, TN 37325.

MC 162894 (Sub-3–2TA), filed September 22, 1982. Applicant: U.S. CARPET CARRIERS, INC., P.O. Box 904, Calhoun, GA 30701. Representative: Edward A. Gowens (same address as applicant). *Carpet,* from points in GA to points in WI, IN, IL, OH, MI, PA, there are five (5) statements of support which may be examined at the commissions Atlanta office.

MC 155079 (Sub-3–3TA), filed September 22, 1982. Applicant: CURTIS L. DODGINS, INC., Route 1, Box 393, Franklin, NC 28734. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *New furniture,* from Toccoa, GA, to points in CA, OR, WA, NV, AZ, NM, TX, OK and AR. Supporting shippers: Robertson Furniture Company, Inc., P.O. Box 847, Elberton Street, Toccoa, GA 30577, and Trogdon Furniture Company, P.O. Box 727, Toccoa, GA 30577.

MC 163932 (Sub-3–1TA), filed September 21, 1982. Applicant: C. & J. TRUCKING COMPANY, 38 Killarney Dr., Union, KY 41091. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. *General commodities, except household goods, classes A & B explosives and bulk commodities,* between Cincinnati, OH, on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting shipper: Nationwide

Shippers Cooperative Association, Inc., 2735 Spring Grove Ave., Cincinnati, OH 45225.

MC 119917 (Sub-3–15TA), filed September 21, 1982. Applicant: DUDLEY TRUCKING COMPANY, INC., 725 Memorial Drive, SE., Atlanta, GA 30316. Representative: David A. Modlinski (same as above). *Light guage galvanized pipe and related fittings,* between AL, GA, FL, SC. Supporting shipper: Crown Products Company, Inc., 6390 Phillips Hwy., Jacksonville, FL 32216.

MC 156778 (Sub-3–6TA), filed September 20, 1982. Applicant: 7 HILLS TRANSPORT, INC., P.O. Box 6205, Rome, GA. 30161 Representative: Don Moore, P.O. Box 6205, Rome GA. 30161. *Contract* Carrier, irregular routes: *Textile Products,* from the facilities of Pharr Yarns in Rome, GA. and McAdenville, N.C., to points in the U.S., (except AK & HI), under continuing contract(s) with Pharr Yarns. Supporting Shipper: Pharr Yarns of Georgia, Inc., P.O. Box 2827, Huffaker Rd., Rome, GA. 30161.

MC 104149 (Sub-3–4TA), filed September 20, 1982. Applicant: OSBORNE TRUCK LINE, INC., 516 North 31st Street, Birmingham, AL 35202. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Contract;* irregular routes, *chemicals and related products, and such other commodities as are manufactured or distributed by a manufacturer of chemicals and related products,* between the facilities of Gulf Oil Corporation at or near Parrish, AL, on the one hand, and, on the other, points in the US in and east of MS, TN, KY, IN and MI. Restriction: Restricted to transportation provided under continuing contract or contracts with Gulf Oil Corporation. Supporting shipper: Gulf Oil Corporation, Post Office Box 3776, Houston, TX 77253.

MC 158219 (Sub-3–1TA), filed September 20, 1982. Applicant: B & G TRUCKING, Route 3, Box 99, Blue Springs Rd., New Market, TN 37820. Representative: Gail Petty (same address as applicant). *Contract* Irregular: *Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses.* Between points in TN on the one hand, and on the other points in AL, AR, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TX, VA, WV, AND WI. Supporting shippers: White Lily Foods, PO Box 871, Knoxville, TN 37901; White Stores, PO Box 320, Knoxville, TN 37901.

MC 160767 (Sub-3–2TA), filed September 20, 1982. Applicant: LADD TRANSPORTATION, INC., No. 1 Plaza Center, Box HP 3, High Point, NC 27261. Representative: Beverly C. Davis (same as above). *Contract carrier,* irregular routes: *Furniture and fixtures,* from Atlanta, GA to points in the States of NC, SC, TN, VA, and KY, under continuing contracts with Simmons USA. Supporting shipper: Simmons USA, 6 Executive Park Dr., N.E., Atlanta, GA 30329.

MC 140484 (Sub-3–33TA), filed September 20, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th Street NW., Washington, DC 20005. *Such merchandise as is dealt in and distributed by wholesale, retail and chain grocery stores, and food business houses, and materials and supplies used in the manufacture of the aforementioned commodities,* between Westmoreland County, PA, on the one hand, and, on the other, NY, NJ, DE, MD, CT, and FL. Supporting shipper: Fox Grocery Company, Inc., Box 29, Rehoboth Valley, Belle Vernon, PA 15012.

MC 145559 (Sub-3–7TA), filed September 20, 1982. Applicant: NORTH ALABAMA TRANSPORTATION, INC., Post Office Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Chemicals and related products (except in bulk),* from facilities of Alco Chemical Corporation, at or near Chattanooga, TN, to San Francisco and Los Angeles, CA, Dallas, TX, Chicago, IL, Philadelphia, PA, Boston, MA, and Jay, ME, and their commercial zones. Supporting shipper: Alco Chemical Corporation, 909 Mueller Drive, Chattanooga, TN 37406.

MC 163895 (Sub-3–1TA), filed September 20, 1982. Applicant: THOMPSON TRUCK LINES, INC., 2411 Gunbarrel, Chattanooga, TN 37421. Representative: J. Greg Hardeman, 618 United Southern Bank Building, Nashville, TN 37219. *Contract:* Irregular: *Paper and paper products, materials, supplies and machinery used in the manufacture of paper and paper products* between points in the states of AL, AR, CO, DE, FL, GA, IA, IL, IN, KS, KY, LA, MD, MO, MI, MS, NE, NJ, NC, OH, OK, PA, TN, TX, VA, WV, and WI under a continuing contract with Inland Container Corporation, Indianapolis, IN. Supporting shipper: Inland Container Corporation, Market Square Center, 151 N. Delaware St., Indianapolis, IN 46206.

MC 163704 (Sub-3–1TA), filed September 20, 1982. Applicant: MIKE BAILEY, INC., Rt. 6, Box 202, Alexander City, AL 35010. Representative: Terry P. Wilson, 428 South Lawrence St., Montgomery, AL 36104. *Pet food,* from the facilities used by Ralston Purina Co., at or near Union City, GA to the facilities used by Ralston Purina Co., at Montgomery, AL and Nashville, TN. Supporting Shipper: Ralston Purina Co., P.O. Box 4190, Montgomery, AL 36195.

MC 163898 (Sub-3–1TA), filed September 20, 1982. Applicant: KING CARTAGE CORP., 732 N. E. Second Avenue, Miami, FL 33132. Representative: Bernard C. Pestcoe, 201 Alhambra Circle, Suite 511, Coral Gables, FL 33134. *General Commodities, except hazardous materials,* between points in Dade, Broward and Palm Beach Counties, FL restricted to transportation having a prior or subsequent movement by water. There are five (5) supporting shippers' statements, which can be examined at the ICC's Regional Office in Altlanta, GA.

MC 162582 (Sub-3–1TA), filed September 22, 1982. Applicant: JOHN'S AUTO REPAIR INC., 1310 Franklin St., Roanoke Rapids, NC 27870. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288. *Contract Irregular: Paper products,* between Halifax County, NC, on the one hand, and, on the other, points in CT, DE, DC, GA, MD, MA, NJ, NY, PA, RI, SC, and VA under continuing contract(s) with Halifax Paper Board Company, Inc., P.O. Box 368, Roanoke Rapids, NC 27870. Supporting shipper: Halifax Paper Board Company, Inc., P.O. Box 368, Roanoke Rapids, NC 27870.

MC 150492 (Sub-3–1TA), filed September 23, 1982. Applicant: DRI-FRI COMPANY, INC., 410 Inskip Road, Knoxville, TN 37912. Representative: Jess D. Campbell, Attorney, 205 Clinch Avenue SW., Knoxille, TN 37902. *Contract,* Irregular: *Frozen foodstuffs and materials, equipment, and supplies used in the manufacture and distribution thereof* from Othello, WA., Park Rapids, MN., and Clark, S.D. to Knoxville, TN. and from Othello, WA. to Johnson City, TN. under continuing contract with Weaver Foodservice Specialists, Knoxvile, TN.

MC 156100 (Sub-3–4TA), filed September 23, 1982. Applicant: CHARLES RAYMOND POWELL, d.b.a GOLDEN TRIAD CARRIERS, P.O. Box 4145, Archdale, NC 27263. Representative: Charles Raymond Powell (same address as applicant). (1) *Hosiery and perfumery* from Marietta, GA; Magnolia, AR; Dayton, Harriman, and Rockwood, TN; Asheboro, Burlington, Concord, Creedmoor, Goldston, Greenboro, Graham, Hickory, and Lumberton, NC to points in the U.S.,

except AK and HI. (2) *Supplies and equipment* used in the manufacturing and selling of hosiery and perfumery from points in the U.S., except AK and HI to Marietta, GA; Magnolia, AR; Dayton, Harriman, and Rockwood, TN; Asheboro, Burlington, Concord, Creedmoor, Goldston, Greensboro, Graham, Hickory, and Lumberton, NC. Supporting Shipper: Kayser-Roth, 2303 West Meadowview Road, Greensboro, NC 27407.

MC 145956 (Sub-3–7 TA), filed September 23, 1982. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rock Road, Belleair, FL 33516. Representative: Paul Meilleur (same address as above). *Animal Blood Serum* from Denver, CO and Dubuque, IA to Lenexa, KS; Walkersville, MD; Miami, FL; Denver, CO; Carson, CA and Augusta, GA. Supporting Shipper: Riggs Bio Chemical, Inc., Rt. 3, Dubuque, IA 52001.

MC 163965 (Sub-3–1TA), filed September 23, 1982. Applicant: BONNEY VAN LINE, INC., 222 US Highway 1, Tequesta, FL 33458. Representative: Charles Moran, Suite 320, 2501 M Street NW, Washington, DC 20037. *Household Goods, as defined by the Commission,* between all points in the US (including AK and HI but excluding OR), restricted to the transportation of traffic handled for or on behalf of the United States Government. Support for this application is provided in two traffic exhibits, as authorized by Commission Order of September 13, 1982.

MC 111397 (Sub-3–2TA), filed September 23, 1982. Applicant: DAVIS TRANSPORT, INC., 1345 South 4th Street, Paducah, KY 42001. Representative: H.S. Melton, Jr., P.O. Box 7406, Paducah, KY 42001. *Uranium Oxide* from McCracken County, KY, to Sequoya County, OK. Supporting shipper: Eldorado Nuclear Limited, 215 John Street, Port Hope, Ontario, Canada.

The following applications were filed in region 4: send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 123194 (Sub-4–7TA), filed September 20, 1982. Applicant: ENTERPRISE TRUCK LINE, INC., 7336 West 15th Avenue, Gary, IN 46406. Representative: Bernard J. Kompare, 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601. *Such commodities as are dealt in or used by manufacturers or distributors of metal and metal products* between points in IA, IL, IN, KY, MI, MN, MO, OH, TN and WI. Supporting shipper: Metal Shippers, One Concourse Plaza, Suite 706, 4711 Golf Road, Skokie, IL, and Wabash Alloys, Inc., U.S. 24 West, Wabash, IN.

MC 128837 (Sub-432), filed September 21, 1982. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. *Contract,* irregular: *Food and related products,* between Bensenville, IL on the one hand, and on the other, Valley View, OH, Dallas, TX, Minneapolis, MN, Englewood, NJ and Kansas City, MO. Restricted to traffic moving under continuing contract(s) with Superior Coffee Company, a subsidiary of Consolidated Foods. Supporting shipper: Superior Coffee Company, a subsidiary of Consolidated Foods, 990 Supreme Dr., Bensenville, IL 60106.

MC 144120 (Sub-4–1TA), filed September 21, 1982. Applicant: K W TRANSIT, INC., 10706 Tesch Lane, Mosinee, WI 54455. Representative: Nancy J. Johnson, Attorney, 103 East Washington St., Box 218, Crandon, WI 54520. *Such commodities as are dealt in wholesale and retail florists* between Marathon County, WI on the one hand, and on the other hand, points in MI, IN, IL, WI, IA, MN, MO, ND, SD, and KS. Supporting shipper: Krueger Wholesale Florist, Inc., 10706 Tesch Lane, Mosinee, WI 54455.

MC 151738 (Sub-4–2TA), filed September 20, 1982. Applicant: CONCEPT, INC., Cooperstown, ND 58425. Representative: Charles E. Johnson, P.O. Box 2056, Bismark, ND 58502–2056. *Commodities as are dealt in, or used by, agricultural equipment, industrial equipment, and lawn and leisure products manufacturers and dealers* (except commodities in bulk) from Fargo, ND to points in MN. Underlying ETA seeks 120 days authority. Supporting shipper: International Harvester Company and John Deere Company.

MC 152392 (Sub-4–1TA), filed September 20, 1982. Applicant: TDS TRUCKING, INC., Fertile, MN 56540. Representative: Todd W. Fpss, 15 Broadway, Suite 502, Fargo, ND 58102. *Anhydrous ammonia, in bulk, in tank vehicles,* between East Grand Forks, Moorhead, Stephen and Thief River Falls, MN and Grafton, Langdon, Walhalla and Hoople, ND, on the one hand, and, on the other, ports of entry, on the international boundary line between the U.S. and Canada located at or near Noyes, MN and Pembina, Neche, Walhalla, Maida, Hannah and Hansboro, ND. Supporting shippers. J. R. Simplot Company, P.O. Box 27, 99 Main St., Boise, ID 83707.

MC 155411 (Sub-4–3TA), filed September 20, 1982. Applicant: S & C TRANSPORT, INC., 16657 Kennebec, Southgate, MI 48195. Representative: Neill T. Riddell, 900 Guardian Building, Detroit, MI 48226. *Contract* irregular: *Petroleum* and *petroleum products* between all points in the U.S. (except AK and HI) under continuing contracts with Dearborn Refining Company of Dearborn, MI and Omega Oil Company, Inc., of Southgate, MI. Supporting shipper(s) Dearborn Refining Company, Dearborn, MI, 48121; Omega Oil Company, Inc., Southgate, MI 48195.

MC 162914 (Sub-4–2), filed September 17, 1982. Applicant: LANCER TRANSPORTATION SERVICES, INC., 552 South Washington St., Naperville, IL 60540. Representative: Daniel O. Hands, 104 S. Michigan Ave., Suite 410, Chicago, IL 60603. *Bagged salt and salt products* from Chicago, IL and points in its Comercial Zone to points in IL, IN, MI, OH and WI. Supporting shipper: Domtar Industries, Sifto Salt Division, 4815 N. Scott, Suite 419, Schiller Park, IL 60176.

MC 163866 (Sub-4–1TA), filed September 17, 1982. Applicant: KUTZLER EXPRESS, INC., 2109 45th Street, Kenosha, WI 53141. Representative: Paul J. Maton, 27 East Monroe Street, Suite 1000, Chicago, IL 60603, (312) 332–0905. *Contract,* irregular, (1) *food products, in containers, and* (2) *materials and supplies used in the processing, canning, and bottling of food products (except commodities in bulk)* between Kenosha, WI and Eau Claire, MI and points in IL, IN, MI and WI under continuing contract(s) with Ocean Spray Cranberries, Inc., Kenosha, WI. An underlying ETA seeks 120 day authority. Supporting shipper: Ocean Spray Cranberries, Inc., Kenosha, WI.

MC 163896 (Sub-4–1TA), filed September 20, 1982. Applicant: S.D.H. CORPORATION, U.S. Route 40, West Terre Haute, IN 47885. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue NW., Suite 500, Washington, DC 20006. *Commodities in bulk in dump vehicles,* between points in Delaware County, IN, on the one hand, and, on the other, points in Marion and Seneca Counties, OH. Supporting shipper: Dobrow Industries, Inc., P.O. Box 2188, Muncie, IN 47302.

MC 163908 (Sub-4–1TA), filed September 20, 1982. Applicant: RONALD J. ENGG, d.b.a. R. J. TRUCKING, Box 171, Westhope, ND 58793. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056. *Contract,* irregular, *oil field production chemicals,* (except in bulk) from Rayne, LA, Kilgore, TX, Odessa, TX, and Stanton, CA, to Minot, ND. Supporting

shipper: Di-Chem Dresser, a division of Dresser Industries, Inc., Minot, ND.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 146817 (Sub-5–3TA), filed September 20, 1982. Applicant: GEORGE CAVES, d.b.a. CAVES TRUCKING, P.O. Box 29357, Lincoln, NE 58529. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506. *Food and related products,* between points in the U.S. (except AK and HI, and Carroll, Crawford, Cherokee, Hardin, Polk, Woodbury, Warren, Webster, Pottawatomie and Cerro Gordo Counties, IA, Carver County, MN, Erie County, NY, and Saline, Douglas, Lancaster and Sarpy Counties, NE). Supporting shipper: Starmill, Inc., Oak Brook, IL 60521.

MC 152775 (Sub-5–7TA), filed September 20, 1982. Applicant: RAM ROD TRUCKING, INC., P.O. Box 1127, Marrero, LA 70073. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Building materials, supplies and equipment,* between the facilities of Gold Bond Building Products at or near Mobile, AL, and Westwego, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, MS, TN, and TX. Supporting shipper: Gold Bond Building Products, 2001 Rexford Road, Charlotte, NC 28211.

MC 153788 (Sub-5–4TA), filed September 20, 1982. Applicant: G & G Company, Inc., P.O. Box 5753, Longview, TX 75608. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Rock, Sand and Gravel* from Bossier Parish, Caddo Parish and Webster Parish, LA to points in TX on and east of Interstate Highway 35. Supporting shipper(s): Lee Ray Construction, Winnsboro, TX 75494; A & T Sand Company, Kilgore, TX 75662; Trotti Thomson, Longview, TX 75608; H & L Construction Company, Sherman, TX 75090.

MC 159408 (Sub-5–2TA), filed September 21, 1982. Applicant: H & W DELIVERY, INC., 2009 East Abram St., Arlington, TX 76010. Representative: Clayte Binion, 623 South Henderson, 2nd Floor, Fort Worth, TX 76102. *Medical and hospital supplies, pharmaceutical products, hydraulic pumps, motors, repair parts, sprockets and gears,* between points in the Fort Worth-Dallas commercial zone, on the one hand, and, on the other points in OK, NM, LA, AR and points of entry on the Mexico-Texas boundary line and Texas Gulf Coast ports. Supporting shipper(s): American Hospital Supply Corp., Grand Prairie, TX, Hydra Rig, Inc., Ft. Worth, TX, Martin Sprocket & Gear, Inc., Arlington, TX.

MC 162468 Sub-5–1TA), filed September 21, 1982. Applicant: EUGENE O. ABLES, d.b.a. Gene Ables Trucking Co., 1200 Silverlake Rd., Topeka, KS 66608. Representative: Eugene Ables (same as above). *Plastica, and rubber products, metal products, iron and steel products, building lumber and materials, and mercer commodities* from KS and MO, to pts in IL, TX, OK, CO, MO, KS, AZ, and LA. Supporting shipper(s): AAmoco Oil Co., Shawnee Mission, KS, Minority Contractor's Assoc., Kansas City, MO.

MC 163438 (Sub-5–2TA), filed September 20, 1982. Applicant: RAYFORD ROGERS, d.b.a. ROGERS FARMS, P.O. Box 248, Leola, AR 27084. Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201. *Treated Poles,* from the facilities of Fordyce Wood Treaters, Inc., at Fordyce, AR, to points in IN, FL, SE and NC. Supporting shipper: Fordyce Wood Treaters, Inc., Fordyce, AR 71742.

MC 163716 (Sub-5–1TA), filed September 20, 1982. Applicant: L. GRIFFIN TRUCKING, INC., 3105 Pimpernel Ave., Baton Rouge, LA 70805. Representative: Leroy Griffin (same as above). *FLUORSPAR* from Burnside Terminal, Burnside, LA and Port Allen Terminal, Port Allen, LA to Port Allen, LA, Geismar, LA and Baton Rouge, LA. Supporting shipper: Allied Chemical Co., Morristown, NJ.

MC 163788 (Sub-5–1TA), filed September 20, 1982. Applicant: JOHN R. LADD, d.b.a. Indian Nation Express, 2201 Chandler Road, Muskogee, OK 74401. Representative: Jack R. Anderson, Suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. Common Regular: *General commodities (except classes A and B explosives, households goods as defined by the Commission and commodities in bulk)* between the plant site of LaBarge Tubular Division, located in Wagoner, OK and Tulsa, OK over the following routes: From Wagoner to Tulsa over U.S. Hwy. 69 and OK 51, and return over the same route. Supporting shipper: LaBarge Tubular Division, Wagoner, OK 74467.

MC 163910 (Sub-5–1TA), filed September 20, 1982. Applicant: CHIKASKIA VALLEY TRUCKING, INC., P.O. Box. 294, Argonia, KS 67004. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. *Chemicals and chemical products used in water treatment, except in bulk,* between Houston, TX and points in OK and KS. Supporting shipper: Treat-Rite Water Labs, Inc., Nowata, OK 74048.

MC 163920 (Sub-5–1TA), filed September 20, 1982. Applicant: D. RYAN TRUCKING, 212 Lakewood Drive, Monroe, LA 71203. Representative: DAN BLAKENEY (same as applicant). *Plastic articles and metal components used in connection with the set up of plastic tanks* between points in the U.S. Supporting shipper: Poly Processing Co. Inc., Monroe, LA.

MC 125535 (Sub-5–26TA), filed September 22, 1982. Applicant: NATIONAL SERVICE LINES, INC. OF NEW JERSEY, 2275 Schuetz Road, St. Louis MO 63141. Representative: Donald S. Helm (same as applicant). Contract: Irregular, *(1) Copper, copper products, wire and cable, cord sets, flexible steel conduit, wrought steel pipe, strip steel and (2) commodities used in the manufacture and distribution of commodities in (1) above (except commodities in bulk in tank vehicles).* Between Glen Dale, WV, Jewitt City CT, Sikeston MO, Bennington VT, on the one hand, and on the other, all points in the U.S. (except AK and HI). Supporting shipper: Triangle PVC Inc., New Brunswick NJ 08903.

MC 152277 (Sub-5–10TA), filed September 24, 1982. Applicant: LONG MILE RUBBER COMPANY, 155 South Court, Exchange Park, Dallas, TX 75245. Representative: D. Paul Stafford, P.O. Box 45538, Dallas TX 75245. *Paper, printed* from Coppell, TX to Lafayette, LA; Jackson, MS; Oklahoma City, OK; Little Rock, AR; Birmingham, AL; Chattanooga and Memphis, TN, Duluth, GA; Pensacola, FL; Denver, CO; Los Angeles, Sacramento and San Francisco, CA; Abuquerque and Los Alamos, NM; and Richland, WA. Supporting shipper(s): Texas Stock Tab, Inc., Coppell, TX 75019.

MC 154586 (Sub-5–4TA), filed September 23, 1982. Applicant: MOO TRUCK LINES, INC., 4625 N. Lindberg, St. Louis, MO 63044. Representative: Roger R. Morris, 1175 St. Patrice, Florissant, MO 63031. *Commodities as are dealt in and used by Wholesale and Retail Food and Drug House, and Containers used in the manufacture of such Commodities. (Excempt Commodities in bulk in tank vehicles)* Between. points in the US. Supporting shipper: Custom Packaging Corporation, Maryland Heights, MO, Lever Brothers Company, New York, NY, Midland Glass Company, Inc., Cliffwood, NJ, Sunshine Mills, Inc., Red Bay, AL, Purex Corporation, St. Louis, MO.

MC 154883 (Sub-5–11TA), filed September 23, 1982. Applicant: LOGGINS TRUCKING COMPANY, P.O. Box 6676, Tyler, TX 75711.

Representative: Larry Loggins (same as applicant). Contract: Irregular. *Ice Cream and Related Products,* from Montgomery, New York to points in TX. Supporting shipper: Goldshield Foods, Montgomery, NY 12549.

MC 156488 (Sub-5–2TA), filed September 23, 1982. Applicant: CONTRANS, INC., 6716 Berger, Kansas City, KS 66111. Representative: Donald J. Quinn, Commerce Bank Building, 8901 State Line, Suite 232, Kansas City, MO 64114. Contract, Irregular; *Toys and related items* between points in the US under a continuing contract with Children's Palace, Kansas City, MO 64116.

MC 157823 (Sub-5–3TA), filed September 22, 1982. Applicant: NOTO MAGIC CITY EXPRESS, LTD., P.O. Box 364, Moberly, MO 65270. Representative: Tom B. Kretsinger, P.O. Box 258, Liberty, MO 64068. Contract, irregular *hides* from Macon MO, to St. Paul, MN. Supporting shipper: Twin City Hide, Inc., South St. Paul, MN 55075.

MC 161600 (Sub-5–2TA), filed September 22, 1982. Applicant: DOUBLE C ENTERPRIZE, INC., 950 Crestwood Cr., Lewisville, TX 75028. Representative: Carl Colman (same as above). Contract: Irregular; *Rubber and related products* from points in LA, MS, AL and AR to Dallas, TX. Supporting shipper(s): Long Mile Rubber Company, Dallas, TX 75245.

MC 163372 (Sub-5–4TA), filed September 24, 1982. Applicant: TRANS-CARRIERS, INC., 1013 Camelot Cove, West Memphis, AR 72301. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103. (1) *Juices for human consumption* from Melrose Park, IL, to points in ND, SD, NE, KS, OK, TX, MN, WI, IA, MO, AR, LA, MI, OH, IN, KY, GA, AL, and MS; and (2) *Concentrate* from Avon Park, FL and Atlanta, GA to Melrose Park, IL. Supporting shipper: Home Juice Co., Inc., Melrose Park, IL.

MC 163662 (Sub-5–1TA), filed September 23, 1982. Applicant: M & A CARTAGE, P.O. Box 1445, Sweetwater, TX 79556. Representative: Clyde Walker (same as above). Contract: Irregular. *General commodities, usual exceptions with prior or subsequent movement by rail* from Sweetwater, Texas and its commercial zone and all points within 150-mile radius. Supporting shipper: A.T. & S.F. Railway Company, Santa Fe Road, North of City, Sweetwater, TX 79556.

MC 163969 (Sub-5–1TA), filed September 23, 1982. Applicant: MANHATTAN TRANSIT, INC., 217 McCall Road, Manhattan, KS 66502. Representative: S. Thomas Abbott (same as above). Contract: Irregular. *Persons and baggage in charter party service* from Manhattan, KS, on the one hand, and, on the other, points and places in the states of CO, NE, and MO, and their commercial zones. Supporting shippers: Terry Ray Enterprises, Inc., Manhattan, KS; Renyard's West, Manhattan, KS; Manhattan Chamber of Commerce, Manhattan, KS.

The following applications were filed in region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., suite 501, San Francisco, CA 94105.

MC 163790 (Sub-6–1TA), filed September 17, 1982. Applicant: CLYDE M. ANDERSON, P.O.B. 427, Cleveland, UT 84518. Representative: Clyde M. Anderson (same as applicant). *Contract carrier,* irregular routes, *alcoholic beverages and related products,* between points in AZ, CA, NV, and UT, for 270 days, under continuing contract(s) with Archer's Distributing, Inc., Wellington, Utah. An underlying ETA seeks 120 days authority. Supporting shipper: Archer's Dist., Inc., POB 596, Price, UT 84501.

MC 163900 (Sub-6–1TA), filed September 17, 1982. Applicant: DOMINGO BARRAGAN IBARGUEN, d.b.a. AUTOTRANSPORTES BARRAGAN Y HERMANOS., S.A., POB 5137, Calexico, CA 92231. Representative: Domingo Barragan Ibarguen (same address as applicant). *Contract Carrier,* Irregular routes: *Wood Products, Nails, Paper and Oil Products,* between points in CA and the International Boundary at Calexico, CA for 270 days. Supporting shippers: Rocklin De Mexico, S.A., Carretera A San Luis KM. 9.5 Mexicali, B.C., Mexico; Central De Envases y Empaques, S.A., Blvd. Lopez Mateos Km. 5.5 and Dagal, S.A., Km 6.5 Carrt. Sn. Luis.

MC 52793 (Sub-6–27TA), filed September 17, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside IL 60162. Representative: David A. Gallagher (same as applicant). *Contract* irregular: *Used household goods,* between points in the U.S., except AK and HI. Restricted to traffic moving under continuing contract with Texaco, Inc., for 270 days. Supporting shipper: Texaco, Inc., P.O.B. 52332, Houston, TX 77052.

MC 163880 (Sub-6–1TA), filed September 17, 1982. Applicant: BERNIE EVELO, 800 Speedway Ave., E. Missoula, MT 59801. Representative: Thomas J. Simmons, P.O.B. 480, Sioux Falls, SD 57101. *Contract,* irregular, *Agricultural storage and feeding systems,* from Webster City, IA Grand Island, NE and Bluffton, IN to the facilities of MDK Enterprises, Inc. located in ID, OR, and WA under contract with MDK Enterprises, Inc. of Portland, OR, for 270 days. An underlying ETA seeks 120 days. Supporting shipper: MDK Enterprises, Inc., 829 S.E. 181 Street, Portland, OR 97233.

MC 163957 (Sub-6–1TA), filed September 22, 1982. Applicant: FLOYD J. KNIGHT, d.b.a. KNIGHTS TRUCKING, Box 262, Thayne, WY 83127. Representative: Flōyd J. Knight (same as applicant). *Contract Carrier,* Irregular routes: *Cheese and materials in making cheese,* between Thayne, WY and points in AZ, CA, CO, NJ, NV, OR, UT, KS, NE, WI, IL, PA, NY, TX, WA, MO, MN, OH for the account of Star Valley Cheese Corp., for 270 days. Supporting shipper: Star Valley Cheese Corp. Hiway 89, Thayne, WY 83127.

MC 163883 (Sub-6–1TA), filed September 16, 1982. Applicant: LENGNER & SONS PRODUCE EXPRESS, 3438 Mendocino Ave., Santa Rosa, CA 95404. Representative: Terry J. Coniglio, 3325 Wilshire Blvd., Suite 1214, Los Angeles, CA 90010. (1) *General Commodities* (excluding household goods as defined by the I.C.C., Class A and B explosives, commodities carried in bulk in tank truck and hazardous waste materials), between Arcata, Calpella, Cloverdale, Eureka, Fort Bragg, Fortuna, Hay Fork, Oroville, Marysville, Red Bluff, Scotia, Ukiah and Willits, CA on the one hand and Roseville, Stockton, Oakland, Richmond, Terra Bella, Fresno and Bakersfield, CA on the other hand, having a prior or subsequent movement by Rail or Ocean Carrier in Interstate or Foreign Commerce, for 270 days. Supporting shippers: Motor Activities Inc., 12672 Dunas Santa Ana, CA 92705; Rail Services, 3710 W. 47th St., Chicago, IL 60632; Western Intermodal Services, Ltd., 15224 Dixie Hwy., Harvey, IL 60426; ITCO, 2211 Wood St., Oakland, CA 94607.

MC 144676 (Sub-6–2TA), filed September 16, 1982. Applicant: McELROY TRUCKING, INC., 1905 Gordon Road, Yakima, WA 98909. Representative: Jack R. Davis, 1200 IBM Building, Seattle, WA 98101. *Contract carriage,* irregular routes, *Chemicals and Related Products,* between points in Chenango County, NY and Montgomery County, PA on the one hand, to points in Dallas County, TX and Los Angeles County, CA on the other hand, for the account of Borden, Inc.—Consumer Products Division, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Borden,

Inc.—Consumer Products Division, 180 East Broad Street, Columbus, OH 42215.

MC 157487 (Sub-6–3TA), filed September 16, 1982. Applicant: NORM'S HAULING, LTD., POB 2378, Prince Albert, Saskatchewan S6V 6Z1. Representative: Robert N. Maxwell, POB 2471, Fargo, ND 58108. *Dry fertilizer,* from Conda, ID to the ports of entry on the International Boundary Line between the U.S. and CD at points in MT for 270 days. Supporting shipper: Nash Fertilizers, POB 577, Laurel, MT 59044.

MC 142935 (Sub-6–6TA), filed September 22, 1982. Applicant: PLASTIC EXPRESS, 2301 E. Francis St., Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Fruit Juices and Apple Products,* except liquids in bulk, from the facilities of Tree Top, Inc. at or near Selah WA to points in TX, for 270 days. Supporting shipper: Tree Top, Incorporated, P.O.B. 248, Selah, WA 98942.

MC 153641 (Sub-6–1TA), filed September 17, 1982. Applicant: JOHN WALKER, d.b.a. RED LABEL EXPRESS, W. 910 Lacey Ave., Hayden, ID 83835. Representative: Kevin M. Clark, 2417 Bank Dr., Ste. 8, Boise, ID 83705. *General Commodities* (except Classes A and B explosives, commodities in bulk and household goods), between points in Shoshone, Kootenai, Benewah, Latah, Bonner, Boundary, Clearwater and Nez Perce Counties, ID and Missoula, Sanders, Lincoln, Lake, Flathead, Yellowstone, Gallatin, Lewis and Clark, and Jefferson Counties, MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 10 shippers. Their statements may be examined in the Regional Office listed.

MC 163885 (Sub-6–1–TA), filed September 16, 1982. Applicant: JACK WEBER TRUCKING, 6960 S. 641 W., Unit 3, Salt Lake City, UT 84047. Representative: Franklin L. Slaugh, 8522 S. 1300 E., Ste. D–203, Sandy, UT 84070. *Contract carrier,* irregular routes: *food and related products,* from Salt Lake City, UT to CA, OR and WA, under continuous contract(s) with Aspen Distribution, Inc., of Salt Lake City, UT., for 270 days. Supporting shipper: Aspen Distribution, Inc., 1765 S. 4250 W., Salt Lake City, UT 84104.

MC 148980 (Sub-6–1TA), filed September 17, 1982. Applicant: WESTERN CARGO, INC., P.O.B. 20489, Reno, NV 89515. Representative: Royal F. Miller (same as applicant). *Contract,* irregular; *General commodities* (except classes A and B explosives, household goods as defined by the Commission, Commodities in bulk, and hazardous waste), between points in NV on the one hand, and, on the other, points in AZ, CA, ID, MT, NV, OR, UT, and WA for 270 days. Supporting shipper: K-Mart Corp., 3100 West Big Beaver, Troy MI, 48084.

MC 163960 (Sub-6–1TA), filed September 22, 1982. Applicant: SIE DUKES d.b.a. ALL 'N' ALL CHARTER TOURS, 16602 S Harris Ave., Compton, CA 90221. Representative: Sie Dukes (same address as applicant). *Passengers and their baggage, in the same vehicle with passengers* in charter and special operations between Los Angeles County, CA and points in AZ and NV or 180 days. Supporting Shipper(s): Sophisticated Hearts, 3600 5th Ave., Los Angeles, CA 90018; B & B Productions, 20113 S Nestor, Carson, CA; Tropicana Tournament Club, 829 E Tannerberg Court, Carson, CA 90746 and Safeway #9 Store, 1133 Artesia Blvd., Manhattan Beach, CA 90262.

MC 163977 (Sub-6–1TA), filed September 24, 1982. Applicant: CLEAR SPRINGS TROUT COMPANY, P.O.B. 712, Buhl, ID 83316. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Beer, wine and related advertising materials,* from points in CA, OR and WA to Burley, Hailey and Twin Falls, ID, for the account of Southern Idaho Distributors, for 270 days. Supporting shipper(s): Southern Idaho Distributors, P.O.B. 423, Twin Falls, ID 83301.

MC 163962 (Sub-6–1TA), filed September 22, 1982. Applicant: DELLEN WOOD PRODUCTS (d.b.a.), DWP TRUCKING, Building 18, Spokane Industrial Park, Spokane, WA 99216. Represenatative: James E. Wallingford, POB 2647, Spokane, WA 99220. *Contract carrier,* irregular routes: *Lumber, Veneer, Shakes, Plywood, Wallboard, Wood and Forest Products* between points in ID, MT, OR and WA; for a period of 270 days: supporting shippers: there are seven shippers; their statements may be examined at the regional office stated above.

MC 41098 (Sub-6–9TA), filed September 22, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., N.W. Suite 301, Washington, DC 20006. *Contract carrier,* irregular routes, *general commodities* (except commodities in bulk, household goods and classes A and B explosives) between points in the U.S. under continuing contracts with Singer Career Systems of Rochester, NY for 270 days. Supporting shipper: Singer Career Systems, 80 Commerce Dr., Rochester, NY 14623

MC 163978 (Sub-6–1TA), filed September 24, 1982. Applicant: DANIEL M. BISHOP & LINDA B. BISHOP, d.b.a. GONALOT TRUCKING, 1679 Suite A, Sage Rd., Medford, OR 97502. Representative: Mike Pavlakis, P.O. Box 646, Carson City, NV 89702. *Lumber, building materials, machinery and equipment, packaged chemicals, minerals and paint,* between AZ, CA, CO, ID, NV, NM, MT, OR, TX, UT, WA and WY, for 270 days. Supporting shippers: There are 10 supporting shippers. Their statements may be examined at the regional office listed.

MC 144893 (Sub-6–3 TA), filed September 24, 1982. Applicant: NORMAN HOWARD, d.b.a. HOWARD TRUCKING OF UTAH, 1755 East 800 North, St. George, UT 84770. Representative: J. Ralph Atkin, P.O. Box 339, St. George, UT 84770. (1) *Petroleum* and *petroleum products in packages,* and (2) *Vehicle body sealer* and *Sound deadening compounds* and related products from Alameda Country & Los Angeles County, CA to all points in CA, NV, AZ, UT, CO, NM, and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Pennzoil, 1630 West Olympic Blvd., Los Angeles, CA 90019.

MC 129420 (Sub-6–1TA), filed September 24, 1982. Applicant: LILE INTERNATIONAL COMPANIES, 15605 S.W. 72nd Ave., Tigard, OR 97223. Representative: Wendell B. Lile (same as applicant). *Household goods, unaccompanied baggage and used automobiles.* Between points in the U.S., excluding VT, for 270 days. Government traffic.

MC 158073 (Sub-6–2TA), filed September 24, 1982. Applicant: MEMOREX DISTRIBUTION AND SERVICES COMPANY, San Tomas at Central Expressway, Santa Clara, CA 95052. Representative: Ellis Ross Anderson, 100 Bush St., Suite 410, San Francisco, CA 94104. *Contract carrier;* irregular route, *General commodities (except Classes A and B explosives, used houshold goods, and commodities transported in bulk),* between Santa Clara, CA, Fort Worth, TX, Northbrook, IL, and Kennebunk, ME, on the one hand, and, on the other, points in the U.S. (except AK and HI) for 270 days. Supporting shipper: Tandy Corp., 1600 Memorex Drive, Santa Clara, CA 95052.

MC 159815 (Sub-6–2TA), filed September 22, 1982. Applicant: LAUREL PHILLIPS, 11570 Ponderosa Dr., Fontana, CA 92335. Representative: Richard C. Celio, 2300 Camino,

Fullerton, CA 92633. *Paper, printing other than newsprint,* from the plantsite and warehouse facilities of Simpson Paper Company located in Pomona, CA to points in OR, WA, NV, ID, UT, CO, MT, and NM, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Simpson Paper Company, 100 Erie St., Pomona, CA.

MC 148874 (Sub-6-8TA), filed September 24, 1982. Applicant: PROFICINET FOOD CO., 17872 Cartwright Rd., Irvine, CA 92705. Representative: Floyd L. Farano, 2555 E. Chapman Ave., Suite 415, Fullerton, CA 92631. *Contract Carrier*—Irregular route: *Food and related products* between points in the U.S. (except AK and HI) for the account of Heinz, USA, Division of H. J. Heinz CO., for 270 days. Supporting shipper: Heinz, USA, a Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15203.

MC 163964 (Sub-6-1TA), filed September 22, 1982. Applicant: RICHARD LEONARD STERKA, d.b.a. WHEELS UNLIMITED, 16011 Commerce Wy., Cerritos, CA 90701. Representative: Donald R. Hedrick, POB 4334, Santa Ana, CA 92702. *Contract Carrier,* Irregular routes: (1) *Motorcycles, golf-carts, snow mobiles, go-carts (racing), portable electric generators, and, related engines, parts and accessories;* (2) *equipment, materials and supplies used in the assembly, display and demonstration of the commodities named in (1) above;* and, (3) *clothing and related items,* between points in the U.S. (except AK and HI) for the account of Yamaha Motor Corporation, U.S.A., for 270 days. Supporting shipper: Yamaha Motor Corporation, U.S.A. 6555 Ketella Ave., Cypress, CA 90630.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27183 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30031]

Rail Carrier; Carolina and Northwestern Railway Co.—Exemption—Abandonment—Lenoir, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505 the Interstate Commerce Commission exempts the abandonment by Carolina and Northwestern Railway Company of 0.51 miles of track at or near Lenoir, NC, from the requirements of 49 U.S.C. 10903 *et seq.*

DATES: This exemption will be effective November 3, 1982, and petitions for reconsideration must be filed by October 25, 1982, and petitions for stay must be filed by October 14, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative, Nancy S. Fleischman, P.O. Box 1808, Washington, DC 20013, (202) 383-4000

Pleadings should refer to Finance Docket No. 30031.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll-free for outside the DC area.

Decided: September 27, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27189 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-154N)

Rail Carrier; Conrail Abandonment of the Clinton and Vulcan Secondary Tracks, MI; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its (1) Clinton Secondary Track between mileposts 0.25 and 13.7 and (2) Vulcan Secondary Track between mileposts 312.1 and 315.5 in the Counties of Lenawee, Monroe and Washtenaw, MI, a total distance of 16.85 miles effective on March 1, 1982.

The net liquidation value of the line between (1) mileposts 0.25 and 13.7 is $538,738 and (2) mileposts 312.1 and 315.5 is $163,415. If, within 120 days from the date of this publication, Conrail receives bona fide offers for the sale, for 75 percent of the net liquidation value, of these lines it shall sell such lines and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27187 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-451N)

Rail Carriers; Conrail Abandonment Between Catasauqua and Leighton, PA; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate and decision authorizing the Consolidated Rail Corporation to abandon its rail line between Catasauqua, milepost 98.0 and Leighton, milepost 119.3 in the Counties of Lehigh and Carbon, PA, a total distance of 21.3 miles effective on March 11, 1982.

The net liquidation value of this line is $1,647,927. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27186 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-116N)]

Rail Carriers; Conrail Abandonment in Kankakee County, IL; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate and decision authorizing the Consolidated Rail Corporation to abandon its rail line between (1) milepost 0.0 and milepost 0.047 and (2) milepost 0.33 and milepost 1.1 in the County of Kankakee, IL, a total distance of .817 miles effective on February 25, 1982.

The net liquidation value of the line between (1) milepost 0.0 and milepost 0.047 and (2) milepost 0.33 and milepost 1.1 is $12,842. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an

equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27785 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 285N)]

Rail Carrier; Conrail Abandonment Between Pana and Paris, IL; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 1 has issued a certificate and decision authorizing the Consolidated Rail Corporation to abandon its rail line between Charleston, milepost 116.5 and Mattoon, milepost 129.5 in the County of Coles, IL, a total distance of 13.0 miles effective on March 11, 1982.

The net liquidation value of this line is $1,522,912. If, within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27184 Filed 10-1-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-191-194 (Preliminary)]

Steel Rails From the Federal Republic of Germany, France, the United Kingdom, and Luxembourg; Countervailing Duty Investigations

AGENCY: U.S. International Trade Commission.

ACTION: Institution of the above-captioned preliminary countervailing duty investigations and termination of investigation No. 701-TA-189 (Preliminary), Steel Rails from the European Community.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of investigation Nos. 701-TA-191 through 194 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671(b)(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the Federal Republic of Germany, France, the United Kingdom, and Luxembourg of steel rails upon which bounties or grants are allegedly being paid.

EFFECTIVE DATE: September 28, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0286.

SUPPLEMENTARY INFORMATION: The purpose of the institution of the above-captioned investigations and the termination of investigation No. 701-TA-189 (Preliminary) is to conform the scope of the Commission's preliminary countervailing duty investigations with those of the Commerce Department. These actions are being taken pursuant to the authority under § 207.13 of the Commission's Rules of Practice and Procedure (19 CFR 207.13).

By order of the Commission.

Issued: September 29, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-27278 Filed 10-1-82; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 989-82]

Designating Ralph W. Tarr as the Representative From the Department of Justice on the Administrative Committee of the Federal Register

By virtue of the authority vested in me by 44 U.S.C. § 1506, I hereby designate Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, as the representative of the Department of Justice on the Administrative Committee of the Federal Register.

Order No. 926-81 of January 13, 1981 is revoked.

This order is effective on September 23, 1982.

Dated: September 23, 1982.

William French Smith,

Attorney General.

[FR Doc. 82-27192 Filed 10-1-82; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 82-19]

Michael A. Rush, D.P.M., Hollywood, Florida; Hearing

Notice is hereby given that on July 12, 1982, the Drug Enforcement Administration, Department of Justice, issued to Michael A. Rush, D.P.M., an Order To Show Cause as to why his pending application for registration with the Drug Enforcement Administration as a practitioner should not be denied.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Friday, October 15, 1982, in Courtroom No. 3, Room 309, U.S. Court of Claims, 717 Madison Place, N.W., Washington, D.C.

Dated: September 28, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82-27198 Filed 10-1-82; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-59)]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Rotorcraft Technology.

DATE AND TIME: October 26, 1982, 8:30 a.m. to 5 p.m.; October 27, 1982, 8 a.m. to 5 p.m.; October 28, 1982, 8 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Committee Room, Bldg. N-200, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Ward, National Aeronautics and Space Administration, Code RJL-2, Washington, DC 20546 (202/755-2375).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Rotorcraft Technology was established

to assist the NASA in assessing the current adequacy of rotorcraft technology and recommend actions to reduce deficiencies through modification of the planned NASA research and technology program in rotorcraft aerodynamics, acoustics, structures, dynamics, propulsion system components, flight control, and avionics. The subcommittee, chaired by Mr. Edward S. Carter, Jr., is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 46 persons including the subcommittee members and participants).

Type of meeting: open.

Agenda

October 26, 1982

8:30 a.m.—Report of Chairperson and Executive Secretary.
9 a.m.—Summary of NASA Rotorcraft Programs; FY 1982 Accomplishments, FY 1983/1984 Plans—NASA Ames Research Center/NASA Langley Research Center.
5 p.m.—Adjourn.

October 27, 1982

8 a.m.—Summary of NASA Rotorcraft Programs; FY 1982 Accomplishments, FY 1983/1984 Plans—NASA Lewis Research Center.
9 a.m.—Discussion of Special Topics from July, 1982 Rotorcraft Subcommittee Meeting.
5 p.m.—Adjourn.

October 28, 1982

8 a.m.—Subcommittee Working Session.
1 p.m.—Issues and Questions—Subcommittee.
2 p.m.—Subcommittee Draft Summary Presentation and Report.
4 p.m.—Adjourn.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

September 24, 1982.

[FR Doc. 82-27175 Filed 10-1-82; 8:45 am]

BILLING CODE 7510-01-M

[Notice (82-58)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the forthcoming meeting of the NASA Advisory Concil, Informal Ad Hoc Solar System Exploration Committee.

DATE AND TIME: October 22-25, 1982, 8:30 a.m. to 5:30 p.m.

ADDRESS: National Center for Atmospheric Research, Damon Room, 1850 Table Mesa Drive, Boulder, Colorado 80303.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Code EL-4, Washington, DC 20546 (202/755-6038).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc Solar System Exploraton Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploration (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The committee is chaired by Dr. Noel W. Hinners and is composed of six other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons, including committee members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Type of meeting.—Open.

Agenda

October 22, 1982

8:30 a.m.—Review Study Reports
1 p.m.—Industry Comment on Report

October 23, 1982

8:30 a.m.—Subcommittee Reports

October 24, 1982

8:30 a.m.—Discussion of Recommendations
1 p.m.—Comments and Plans for Final Report

October 25, 1982

8:30 a.m.—Plans for Next Year's Activity

Richard L. Daniels,

Director, Management Support Office, Office of Management.

September 24, 1982.

[FR Doc. 82-27176 Filed 10-1-82; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Subpanel for Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel for Neurobiology Program of the Advisory Panel for Behavioral and Neural Sciences
Date: 9:00 a.m. to 5:00 p.m. each day
Place: Room 1224, National Science Foundation, 1800 G. St., NW., Washington, DC.
Type of Meeting: Part Open: 10/21 9 a.m.-5 p.m.; Closed 10/22 9 a.m.—2 p.m.; Open: 10/22 2 p.m.-5 p.m.
Contract Person: Steven E. Kornguth, Program Director for Neurobiology, National Science Foundation, Room 320, 1800 G. St., NW., Washington, DC. 20550. Telephone (202) 357-7471
Purpose of Panel: To provide advice and recommendations concerning support for research in Neurobiology.
Agenda:
Open: October 22, 2 p.m. to 5 p.m. General Discussion of the current status and future trends in Neuroscience.
Closed: October 21, 9:00 a.m. to 5 p.m. and October 22 9 a.m. to 2 p.m. To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of the proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act
Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

September 29, 1982.

[FR Doc. 82-27225 Filed 10-1-82; 8:45 am]

BILLING CODE 7555-01-M

Subpanel for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Behavioral and Neural Sciences, Subpanel on Psychobiology
Date and Time: October 21-22, 1982, 8:30 a.m.—5:00 p.m. each day
Place: National Science Foundation, 1800 G Street, N.W., Room 642, Washington, DC
Type of Meeting: Closed
Contact Person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C., (202) 357-7949
Purpose of Panel: To provide advice and recommendations concerning support for research in psychobiology
Agenda: To review and evaluate research proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal ir.formation concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979

M. Rebecca Winkler,

Committee Management Coordinator.

September 29, 1982.

[FR Doc. 82–27226 Filed 10–1–82; 8:45 am]

BILLING CODE 7555–01–M

Subpanel for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Behavioral and Neural Sciences, Subpanel for Sensory Physiology and Perception

Date and Time: October 21–22, 1982, 9:00 a.m. to 5:00 p.m.

Place: Room 628, at The National Science Foundation, 1800 G Street, N.W., Washington, DC 20550

Type of Meeting: Closed 9:00 a.m. to 5:00 p.m., Oct. 21 and 22

Contact Person: Dr. William A. Yost, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550; (202) 357–7428

Summary Minutes: May be obtained from the Contact Person, Dr. William A. Yost at the address listed above

Purpose of Panel: To provide advice and recommendations concerning support for research in sensory physiology and perception

Agenda: To review and evaluate research proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(C), Government in the Sunshine Act

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979

M. Rebecca Winkler,

Committee Management Coordinator.

September 29, 1982.

[FR Doc. 82–27227 Filed 10–1–82; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on October 21 and 22, 1982, at the Miramar-Sheraton Hotel, 1133 Ocean Avenue, Santa Monica, CA. The Subcommittee will review the issues associated with the flooding and seismic hazards at Systematic Evaluation Program (SEP) plants, the NRC Staff's proposed solutions for plants which do not meet the requirements of the Standard Review Plant (SRP), the site-specific development of design basis tornado windspeeds, and the recent ACRS recommendations on the evaluation of seismic design margins.

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, October 21, 1982—8:00 a.m. until the conclusion of business

Friday, October 22, 1982—8:00 a.m. until the conclusion of business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: September 27, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82–27262 Filed 10–4–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–454 OL and STN 50–455 OL]

Commonwealth Edison Co. (Byron Station, Units 1 and 2); Notice of Prehearing Conference

September 28, 1982.

Please take notice that pursuant to the order in this proceeding of August 30, 1982, a prehearing conference to monitor the progress of discovery will be held on October 14, 1982, at 9:30 a.m. local time in the Federal Building, Room 260, 211 South Court Street, Rockford, Illinois 61101.

It is so ordered.

Dated at Bethesda, Maryland, this 28th day of September 1982.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Judge.

[FR Doc. 82–27263 Filed 10–5–82; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Alabama Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 27 to Facility Operating License No. NPF–2 and Amendment No. 16 to Facility Operating License No. NPF–8 issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Houston County, Alabama. The amendments are effective as of the date of issuance but will expire on September 1, 1983.

The amendments change the Technical Specifications relating to diesel generator load testing for a one-time period expiring on September 1, 1983. The change allows the diesel

generators to be tested for two hours at the 2000-hour rating and 22 hours at the continuous rating instead of at the 2000-hour rating pending future changes to the loadings of river water onto the diesels automatically.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since these amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated August 3, 1982, as supplemented August 20, 1982, (2) Amendment Nos. 27 and 16 to License Nos. NPF-2 and NPF-8, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of September 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-27248 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for import licenses. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

The table below lists the new major import applications.

Dated this 24th day of September at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (IMPORT)

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Sept. 13, 1982, Sept. 14, 1982, ISNM82017.	3.2 pct. enriched uranium	27,280.00	872.96	U.S. supplied material being returned to U.S. DOE or Westinghouse for storage.	From W. Germany.
Transnuclear, Inc., Sept. 20, 1982, Sept. 20, 1982, ISNM82018.	1.0 pct. enriched uranium	21,000	210	Enriched uranium from reprocessing of Wuergassen fuel—to be used as feed for UES-4104-DUE.	Do.
Transnuclear, Inc., Sept. 20, 1982, Sept. 20, 1982, ISNM82019.	1.20 pct. enriched uranium	27,000	324	Enriched uranium from reprocessing Gundremmingen fuel—to be used as feed for UES-4104-DUE.	Do.
Edlow International Co., Sept. 17, 1982, Sept. 20, 1982, ISNM82020.	5.0 pct. enriched uranium	5,000,000	250,000	For ultimate use as fuel in nuclear reactors	From various countries.

[FR Doc. 82-27261 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-295]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 76 to Facility Operating License No. DPR-39, issued to the Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of the Zion Station, Unit 1 (the facility) located in Zion, Illinois. The amendment is effective as of the date of issuance.

The amendment will permit the 1B Charging pump to be inoperable for an additional three days (until 1440 hours on September 29, 1982) while repairs are completed to the pump. This amendment is being issued on an expedited basis to maintain the plant at steady-state operation and avoid a shutdown transient which would be required by our Technical Specifications but shown by our evaluation to be unnecessary.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated September 23, 1982, (2) Amendment No. 76 to License No. DPR-39, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099. A copy of items (2) and (3) may be obtained upon request

addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 24th day of September, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-27249 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget Review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension and adjustment to burden.

2. The title of the information collection: 10 CFR Part 19, "Notices, Instructions, and Reports to workers; Inspections.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Annually and on occasion.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the number of responses: 467,000.

7. An estimate of the total number of hours needed to complete the requirement or request: 77,800.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 19, Section 19.13, "Notifications and Reports to Individuals," requires NRC licensees to provide radiation workers with reports of their exposure to radiation. The information in such reports is used by both individual workers and NRC licensees to assure that radiation doses to individuals are maintained within established limits.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Gwendolyn W. Pla, (202) 395-6880.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 28th day of September 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-27257 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: Certificate of Disposition of Materials.

3. The form number if applicable: NRC 314.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Firms and individuals holding NRC licenses to possess and use radioactive materials who do not wish to renew those licenses.

6. An estimate of the number of responses: 200.

7. An estimate of the total number of hours needed to complete the requirement or request: 100.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Provides detailed information regarding disposition and/or procurement of radioactive material upon termination of the license.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Gwendolyn W. Pla, (202) 395-7313.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 28th day of September 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-27258 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR 35.27, Records of Teletherapy Inspections and Servicing, Amendment.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Once every five years.

5. Who will be required or asked to report: NRC teletherapy licensees.

6. An estimate of the number of responses: 84.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 42.

8. An indication of whether Section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Proposed amendment to 10 CFR 35.27 requires all teletherapy licensees to establish a program for the periodic inspection and servicing of teletherapy machines and the keeping of records to verify compliance.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Gwendolyn W. Pla, (202) 395-6880.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 24th day of September 1982.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 82-27259 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co., Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 53 to Facility Operating License No. DPR-67, issued to Florida Power and Light Company, which revised Technical Specifications for operation of the St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to delete the current requirements to periodically test the insulation of certain Class 1E electrical underground cables for environmental damage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CRF Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 28, 1982, (2) Amendment No. 53 to License No. DRP-67 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of September, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 82-27250 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458/459-OL and ASLBP No. 82-468-01 OL]

Gulf States Utilities Co., Cajun Electric Power Coop. (River Bend Station, Units 1 and 2); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Gulf States Utilities Co. and Cajun Electric Power Coop. (River Bend Station, Units 1&2), Docket No. 458/459-OL, is hereby reconstituted by appointing the following Administrative Judge to the Board: Mr. Gustave A. Linenberger. Dr. Forrest J. Remick, former member of this Board, has resigned from the Panel.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr. Chairman
Dr. Richard Cole
Mr. Gustave A. Linenberger

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Gustave A. Linenberger, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland this 24th day of September 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 82-27260 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co.; Consideration of Issuance of Amendment to Provisional Operating License

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would approve expansion of the spent fuel storage capacity from 1800 to 2600 spent fuel assemblies. Such approval would allow the pool to be sequentially reracked with free-standing, high-density poisoned racks.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By September 28, 1982, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of

the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: (petitioner's name and telephone number), (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G. F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 20, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at 101 Washington Street, Toms River, New Jersey 08753. The licensees intend to submit a final report in June 1983, which will address the areas of reactivity considerations, the pool's structural adequacy and the heat load in the pool in more detail.

Dated at Bethesda, Maryland this 28th day of September 1982.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-27251 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-315]

Indiana and Michigan Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Facility Operating License No. DPR-58, issued to Indiana and Michigan Electric Company (the licensee), which revised Technical Specifications for operation of Donald C. Cook Nuclear Plant, Unit No. 1 (the facility) located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

The amendment extends until October 9, 1982 the permissible operation in modes 2 and 3 with one Safety Injection pump inoperable.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated September 17, 1982, (2) Amendment No. 62 to License No. DPR-58, and (3) the Commission's letter dated September 17, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of Items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of September 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 82-27252 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275, 50-276; and DD-82-10]

Pacific Gas & Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Director's Decision Under 10 CFR 2.206

In a letter dated May 12, 1982, the Joint Intervenors [1] to the Diablo Canyon Nuclear Power Plant licensing proceeding directed a request for action pursuant to 10 CFR 2.206 to the Director of the Office of Nuclear Reactor Regulation. Specifically, Joint Intervenors requested:

(1) The issuance of an order to show cause why Pacific Gas and Electric Company (PG&E) should not be directed to file forthwith the requisite amendments to the pending operating license applications for Diablo Canyon Units in light of the extensive and conceded restructuring by PG&E of the Diablo Canyon Project organization and management; and (2) subsequent to the filing of such amendments, a hearing to determine the consistency of the restructured organization and management with all applicable provisions of the Atomic Energy Act, 42 U.S.C. 2011 *et seq. and the Commission's regulations.*

They assert that given the breakdown of PG&E's quality assurance program in the past, the extensive restructuring of PG&E and its impact on quality assurance activities must be closely examined to assure that past failures are not repeated. Petition at 5–6.

Their request was supplemented by an additional letter, dated May 25, 1982, which asserted that a license amendment application submitted by PG&E on May 10, 1982, requesting certain changes to its technical specifications for Diablo Canyon Unit 1, did not satisfy the Joint Intervenors' concerns. Notice of receipt of the Joint

[1] The San Luis Obispo Mothers for Peace, Scenic Shoreline Preservation Conference, Inc., Ecology Action Club, Sandra Silver, Gordon Silver, Elizabeth Apfelberg, and John J. Forster.

Intervenors' petition was published in the **Federal Register** on June 22, 1982 (47 FR 26954).

Discussion

On September 22, 1981, following the Licensing Board's low power decision and Commission review under the immediate effectiveness rule [2] a license was issued to PG&E for fuel loading and low-power testing up to 5% of rated power for the Diablo Canyon Plant Unit 1. Subsequently, on November 19, 1981, the Commission suspended the low-power license pursuant to 10 CFR 2.202, because new information had been developed which raised doubts about the adequacy of PG&E's quality assurance program.[3] The Commission further ordered the licensee to conduct an independent design verification program on all safety-related activities performed prior to June 1978 under all seismic service-related contracts. Verification of quality assurance program effectiveness was identified as a major element of the remedial program. That program is now underway.

On March 22, 1982, PG&E announced that the Diablo Canyon Project Organization was being restructured in order to integrate Bechtel Power Corporation as the project manager, with responsibility for completion of the work necessary to:

(1) Restore the low power license for Unit 1,

(2) Obtain a full power license for the plant,

(3) Complete construction of Unit 2, and

(4) Provide start-up engineering and construction support needed to bring both units into commercial operation.

The role of Bechtel Power Corporation was further clarified in a meeting with NRC personnel on March 25, 1982 and in a letter to the Director of Nuclear Reactor Regulation on April 22, 1982.

For Diablo Canyon Unit 1, Bechtel Power Corporation personnel, as part of the single totally integrated Diablo Canyon Project Organization, will act in support of PG&E personnel to help establish objectives, schedules, programs and to monitor those items. The above activities will be conducted in accordance with the Project Quality Assurance Program. The Project Quality Assurance Program was developed using the previously NRC approved Bechtel Power Corporation Topical Report on Quality Assurance, BQ–TOP–1, modified to conform to the Diablo Canyon Project Organization. The NRC Staff has reviewed the Project Quality Assurance Program and found it acceptable following receipt of certain additional information contained in the Licensee's letter of August 13, 1982. Bechtel does not plan to do any actual construction work at either Unit 1 or Unit 2, although some design activities involving additional personnel may be performed for Unit 2.

PG&E continues to be in control of the general design and construction of both Units. Consequently, the introduction of Bechtel Power Corporation into the overall Diablo Canyon Project Organization and its related quality assurance program does not represent a significant change to the information supplied by the licensee and reviewed by the NRC concerning the requirements of 10 CFR 50.34(a)(7). Thus, no amendment to the construction permits for the Diablo Canyon facilities is required.[4]

The information required by 10 CFR 50.34(b)(6) (i) and (ii) to be submitted in the Final Safety Analysis Report of the operating license application describes the organizational structure and managerial and administrative controls for the plant during operation. None of the changes described so far by PG&E with respect to Bechtel's participation in the Diablo Canyon project alter previously supplied information concerning how the facilities would function as operational plants.[5]

However, even if the NRC Staff believed at this time that more information is needed with respect to the operating license applications, an order to show cause pursuant to 10 CFR 2.202 would be inappropriate. In the course of the review of operating license applications, amendments to the application to supplement or update information previously submitted or to demonstrate compliance with regulatory requirements may be required. A licensee must either provide the amendments voluntarily or in response to Commission requests if consideration of the license application is to continue. As a means of obtaining information for a licensing review, an order pursuant to 10 CFR 2.202 to modify, suspend or revoke a license is unnecessary where no license has issued.

There is an additional reason why I decline to initiate a proceeding with respect to the quality assurance program at the Diablo Canyon project at this time. On June 8, 1982, the Joint Intervenors filed a motion before the Atomic Safety and Licensing Appeal Board requesting that the Board revoke the Diablo Canyon low power operating license, vacate the Licensing Board's conclusions in its July 17, 1981 Partial Initial Decision as to quality assurance, and reopen the record to consider the quality assurance and quality control issues. In response to that motion, the Appeal Board on July 16, 1982, certified to the Commission questions concerning the extent of its jurisdiction to consider QA/QC issues at Diablo Canyon.[6]

Thus, the question of the necessity and scope of any further proceedings on the issue of quality assurance at the Diablo Canyon project is before both the Commission and the Appeal Board. In view of the pendency of these matters before the Commission and the Appeal Board, initiation of further proceedings by me would be inappropriate. *See Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–6, 13 NRC 443 (1981).

For the reasons set forth above, the Joint Intervenors' request is *denied.*

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulation. As provided in 10 CFR 2.206(c), this decision will constitute the final action of the Commission twenty-five (25) days after the date of issuance, unless the Commission on its own motion institutes the review of this decision within that time.

Dated at Bethesda, Maryland this 22 day of September 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82–27253 Filed 10–1–82; 8:45 am]

BILLING CODE 7590–01–M

[2] *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Plant, Units 1 and 2), LBP–81–21, 14 NRC 107 (1981); *Pacific Gas & Electric* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI–81–22, 14 NFC 598 (1981).

[3] *Pacific Gas & Electric Company,* (Diablo Canyon Nuclear Power Plant, Unit 1), CLI–81–30, 14 NRC 950 (1981).

[4] An amendment to a construction permit is only required if there are changes of significance affecting the principal architectural and engineering design criteria and other bases on which the facility was licensed. *See Northern Indiana Public Service Co.* (Bailly Generating Station, Nuclear–1), CLI–79–11, 10 NRC 733, 737 (1979), *remanded on other grounds, State of Illinois v. NRC,* D.C. Cir. No. 81–1131, decided July 1, 1981.

[5] The proposed amendments to technical specifications submitted by PG&E on May 10, 1982 address Technical Specifications which govern the operation of the facility. Thus, Joint Intervenors' concern that these proposed changes are insufficient to address their concerns is misplaced because the technical specifications to be amended do not describe activities at the Unit 1 facility with which Bechtel Power Corporation is involved.

[6] *Pacific Gas & Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB–681, —— NRC —— (July 16, 1982).

[Docket Nos. 50-275 and 323]

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Issuance of Director's Decision Under 10 CFR 2.206

Mr. Joel Reynolds on behalf of the Intervenors to the Diablo Canyon Nuclear Power Plant licensing proceedings by letters dated May 12 and 25, 1982, requested the issuance of an order to Pacific Gas & Electric Company to show cause why it should not be required to submit an amendment to its operating license applications to reflect recent changes in the organization and management of the Diablo Canyon project.

Mr. Reynolds' letters have been treated as a request for action under 10 CFR 2.206. Upon review of this matter, the Director of the Office of Nuclear Reactor Regulation has determined that the request does not provide an adequate basis for issuance of a show cause order. Accordingly, the request has been denied.

Copies of the Director's decision are available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document room for the Diablo Canyon plant at the San Luis Obispo Free Library, 888 Marro Street, San Luis Obispo, California 93406. A copy of the decision will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations.

As provided in 10 CFR 2.206(c), the decision will constitute the final action of the Commission twenty-five (25) days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Bethesda, Md., this 22nd day of September 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-27254 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units Nos. 1 and 2); Exemption

I

Public Service Electric and Gas Company (the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-70 and DPR-75 which authorize operation of the Salem Nuclear Generating Station Units 1 and 2 (Salem or the facilities). These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Salem County, New Jersey.

II

Section IV.F.1 of Appendix E to 10 CFR Part 50 requires that for each site, at which one or more power reactors are located and licensed for operation, a full-scale emergency preparedness exercise shall be conducted at least annually and shall include participation by appropriate State and local government agencies.

By letter dated July 9, 1982, Public Service Electric and Gas Company (PSE&G) requested an exemption from certain annual exercise requirements of Section IV.F.1. Specifically, PSE&G requested that the next full-scale emergency preparedness exercise for Salem be conducted on or about September 29, 1982 and that the anniversary date for performance of future full-scale exercises be similarly changed.

The last full-scale emergency exercise at Salem was conducted on April 9, 1981, and the next exercise had been scheduled for May 19, 1982. In preparation for the formal exercise a full-scale "practice" exercise was conducted on April 14, 1982. This "practice" exercise activated the PSE&G Emergency Response Facilities, the New Jersey and Delaware Emergency Centers, and field operations. PSE&G indicates that on May 1, 1982, on contract expiration a strike against PSE&G commenced. Consequently, PSE&G, NRC-Region I, FEMA-Regions II and III, and the States of New Jersey and Delaware agreed to postpone the formal exercise until September 29, 1982.

We have reviewed the events that form the basis of the PSE&G request for exemption from the scheduled "annual" date. Based on the fact that the "practice" exercise was determined to be satisfactory and all deficiencies have been addressed and based on the agreement of the participating agencies to delay the formal exercise to September 29, 1982 we find that this delay will not adversely affect the overall state of emergency preparedness at Salem.

For the above reasons, we conclude that the licensee's request for exemption should be granted.

III

Accordingly, the Commission has determined that an exemption in accordance with 10 CFR 50.12 is authorized by law, will not endanger life or property or the common defense and security and is otherwise in the public interest.

The requested exemption from the exercise requirements of 10 CFR (Part 50, Appendix E, Section IV.F.1.a to allow the next full-scale emergency preparedness exercise to be conducted on or about September 29, 1982 is hereby granted. Future full-scale exercises shall be scheduled to be consistent with the date of this exercise.

The Commission has determined that this exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. Having made this determination, we have further concluded that the exemption involves an action which is insignificant from the standpoint of environmental impact and, pursuant to 10 CFR 51.5(d)(4), that an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 23rd day of September 1982.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 82-27255 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-522 and STN 50-523]

Puget Sound Power and Light, et al. (Amended Application for Construction Permits and Facility Licenses, Skagit/Hanford Nuclear Project); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Stephen F. Eilperin, Chairman
Christine N. Kohl
Dr. Reginald L. Gotchy

Dated: September 28, 1982.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 82-27256 Filed 10-1-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 19085; File No. SR-Philadep-82-7]

Filing and Immediate Effectiveness of Proposed Rule Change by Philadelphia Depository Trust Company ("Philadep")

September 28, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 17 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1982, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would allow Philadep to adjust the fees it charges its members who participate in Philadep's Institutional Delivery System ("PIDS"). Since PIDS is linked to the Institutional Delivery System ("IDS") operated by the Depository Trust Company ("DTC"), Philadep merely passes through to its PIDS participants the fees assessed it by DTC. The proposed rule change would enable Philadep to pass through the IDS service fees DTC recently adopted or increased. (*See* Securities Exchange Act Release No. 19012 (August 25, 1982), File No. SR-DTC-82-4.) These fees included: (1) Increased charges to brokers and institutions for all Confirms and Affirms; (2) a new charge for investment manager Affirms to be collected by DTC in equal parts from the broker and the clearing bank or, in the absence of a clearing bank, entirely from the broker; (3) a new fee to banks, for each Confirm the banks request; (4) a new fee to brokers for each unaffirmed and Eligible Trade Report line item, (5) a new fee to brokers and banks for Deliver and Receive Tickets; and (6) a reduced fee to deliverers and receivers for Deliver Orders. In its filing, Philadep stated its belief that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act in providing for the equitable allocation of reasonable dues, fees and other charges among participants.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-Philadep-82-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27237 Filed 10-1-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22647; (70-6779)]

Mississippi Power Co.; Proposed Issuance and Sale of Preferred Stock

September 27, 1982.

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, a subsidiary of The Southern Company, a registered holding company has filed a declaration pursuant to Sections 6(a), 7 and 12(c) of the Public Utility Holding Company Act of 1935 and Rules 42 and 50 thereunder.

Mississippi proposes to issue and sell up to $10,000,000 aggregate par value of its preferred stock, with a par value of $100 per share ("New Preferred Stock"), in one or more series from time to time not later than September 30, 1983, at competitive bidding for a price to Mississippi of not less than 100% nor more than 102¾% of the par value per share, which shall also be the public offering price per share. Mississippi proposes publicly to invite from time to time sealed, written proposals from prospective bidders for the purchase of the New Preferred Stock. An initial public invitation may be published requesting that those interested in bidding so advise Mississippi. Thereafter, Mississippi will designate the date and time for each presentation and opening of proposals in accordance with the competitive bidding requirements of Rule 50. In addition, Mississippi proposes to pay to the purchasers of the New Preferred Stock compensation for their services in purchasing and making a public offering of such shares, which compensation shall be included as part of the competitive bidding of the New Preferred Stock.

The authorized number of shares of preferred stock of Mississippi will be increased by amendment to the Articles of Incorporation of Mississippi and the New Preferred Stock will be created, and its terms established, by resolution of the board of directors of Mississippi. Mississippi may also make provision for a cumulative sinking fund for the benefit of a particular series of the New Preferred Stock which would retire not more than 5% annually of the number of shares of such series initially issued, commencing five years or later after the sale, with the non-cumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming up to an additional like number of shares of such series.

Mississippi may provide that no share of a particular series of the New Preferred Stock will be redeemed for a five-year period commencing with the first day of the month of issuance, if such redemption is for the purpose or in anticipation of refunding such share directly or indirectly through the incurring of debt, or through the issuance of stock ranking equally with or prior to such series as to dividends or assets, if such debt has an effective interest cost to Mississippi (computed in accordance with generally accepted financial practice) or such stock as an effective dividend cost to Mississippi of less than the effective dividend cost to Mississippi of the New Preferred Stock.

Mississippi may request by amendment hereto that such proposed sale of the New Preferred Stock, or any part thereof, be excepted from the competitive bidding requirements of Rule 50 should circumstances develop which, in the opinion of Mississippi's management, make such exception in the best interests of Mississippi and its investors and consumers.

Mississippi proposes to use the proceeds from the sale of the New Preferred Stock, along with other funds,

to pay a part of its cash requirements to carry on its electric utility business.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of the Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 21, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certifcate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27239 Filed 10-1-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22648; (70-4537)]

Northeast Utilities and the Rocky River Realty Co., the Connecticut Light & Power Co.; Proposed Extension of Time for the Issuance and Sale of Long-Term Notes to Holding Company

September 27, 1982.

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, The Rocky River Realty Company ("Rocky River"), its nonutility subsidiary, and The Connecticut Light and Power Company ("CL&P"), P.O. Box 270, Hartford, Connecticut 06101, an electric utility subsidiary company of Northeast, have filed with this Commission a fifth post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

By order in this proceeding dated October 24, 1967 (HCAR No. 15884), Rocky River was authorized to engage in the business of acquiring, maintaining, and disposing of real property in connection with the utility operations of the operating companies of the Northeast holding-company system. Said order of October 24, 1967, as amended by supplemental orders of the Commission dated December 21, 1970, October 27, 1972, and October 21, 1977 (HCAR Nos. 16941, 17740, and 20219), authorized Rocky River to issue and sell to Northeast until October 24, 1982, and Northeast was authorized to acquire, up to $10,000,000 aggregate principal amount of Rocky River's long-term unsecured notes ("Notes") to finance such real estate activities. It was provided that, since Rocky River's capital requirements vary from time to time, Rocky River could in its discretion pay out of capital Notes theretofore issued and thereafter issue and sell to Northeast, and Northeast could acquire, additional Notes in adjusting the amount of notes outstanding to Rocky River's capital requirements.

By further post-effective amendment, it is now proposed that the authorization regarding said Notes be extended for a five-year period expiring October 24, 1987.

The post-effective amendment to the application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 21, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27238 Filed 10-1-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19082; (SR-Phlx-82-7)]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

September 27, 1982.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103, submitted on August 5, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securties Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Phlx Rule 60, which currently permits summary proceedings and fines not to exceed $500 for minor breaches of order and decorum on the Phlx trading floors. Rule 60 as it is proposed to be amended would permit summary proceedings and fines not to exceed $500 for breaches of Phlx administrative regulations as well as for minor breaches of order and decorum presently covered by the rule. The administrative regulations would relate to the operation of the trading floor of the exchange and the management of business of the exchange.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18986, August 19, 1982) and by publication in the **Federal Register** (47 FR 37730, August 30, 1982). No written comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there-under applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations there-under.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc.82-27240 Filed 10-1-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5451]

Monsey Capital Corp.; Application for 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 the Small Business Investment Act of 1958.

[1] Rule 60 as it pertains to administrative regulations is not self-implementing, and the Phlx will file a proposed rule change pursuant to Section 19(b) of the Act for each administrative regulation it proposes to implement.

as amended, (15 U.S.C. 661 *et seq.*) has been filed by Monsey Capital Corporation (Monsey), 4 Blauvelt Road, Monsey, New York 10952, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1982).

The officers, directors and sole shareholder are as follows:

President, Director:
Samuel A. Myski, 4 Blauvelt Road, Monsey, New York 10952
Secretary/Treasurer Director:
Chaim Zev Weiss, 10 Elyon Road, Monsey, New York 10952
Advisor:
Stanley Friedman, CPA, 619 W. 46th Street, New York, New York 10036
100% Shareholder:
Keren Hachesed of Monsey, Monsey, Inc., 4 Blauvelt Road, Monsey, New York 10952

The Applicant, a New York corporation will begin operations with $500,000 paid-in capital and paid-in surplus. Monsey will conduct its activities primarily in the State of New York.

The Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Monsey, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-27273 Filed 10-1-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2060 Amdt. No. 1]

Pennsylvania; Declaration of Disaster Loan Area

The above numbered declaration (see 47 FR 37733; August 26, 1982) is amended by adding the adjacent county of Northampton as a result of damage caused by heavy rains and flooding which occurred on August 8–9, 1982. All other information remains the same, i.e., the termination dates for filing applications for physical damage is the close of business on October 15, 1982, and for economic injury until the close of business on May 16, 1983.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 23, 1982.

Robert B. Webber,

Acting Administration.

[FR Doc. 82-27272 Filed 10-1-82; 8:45 am]

BILLING CODE 8025-01-M

Region I—Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting on Tuesday, October 26, 1982, at 10:00 a.m., in the Federal Building, 55 Pleasant Street, Concord, New Hampshire, Room 304, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert Teague, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224–5588.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

September 29, 1982.

[FR Doc. 82-27275 Filed 10-1-82; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-5218]

West Tennessee Venture Capital Corp.; 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. et seq.), has been filed by West Tennessee Venture Capital Corporation (Applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1982).

The officers, directors, and stockholders of the Applicant are as follows:

Chairman of the Board, President:
Percy H. Harvey, 3625 White Birch Drive, Memphis, Tennessee 38116
Vice Chairman of the Board, Vice President:
Richard S. Moody, 5939 Spruce Hollow Cove, Bartlett, Tennessee 38134
Secretary:
Peter R. Pettit, 111 Cherry Road, Memphis, Tennessee 38117
Treasurer:
Patricia W. Shaw, 1674 South Parkway, East, Memphis, Tennessee 38106
Directors:
Frank J. Banks, 1769 Parkway Terrace, Memphis, Tennessee 38114
Howard Boutte, Jr., 1006 Surrey Street, Lafayette, Louisiana 70501
David C. Anderson, 1609 Cordova Road, Germantown, Tennessee 38138
Dan K. Green, 5670 Los Gatos Drive #4, Memphis Tennessee 38118
Milwood L. Hobbs, 2879 Cordie Lee Cove, Germantown, Tennessee 38138
Ernest M. Owens, 1557 Joanne Street, Memphis, Tennessee 38114
Jesse H. Turner, Sr., 1278 Gill Avenue, Memphis, Tennessee 38106
100 Percent Common Stockholder:
Tennessee Valley Center, 8 North Third Street, Memphis, Tennessee 38103
15.4 Percent Class "B" Preferred Stockholder:
First Tennessee Bank N.A. Memphis, P.O. Box 84, Memphis, Tennessee 38101
15.4 Percent Class "B" Preferred Stockholder:
Federal Express Corporation, Box 727, Dept. 371–099, Memphis, Tennessee 38194
15.4 Percent Class "B" Preferred Stockholder:
Holiday Inns, Inc., 3742 Lamar Avenue, Memphis, Tennessee 38195
15.4 Percent Class "B" Preferred Stockholder:
Malone & Hyde, Inc., 1991 Corporate Avenue, Memphis, Tennessee 38132
22.2 Percent Class "B" Preferred Stockholder:
State of Tennessee, State Capitol Building, Nashville, Tennessee 37219
5.4 Percent Class "B" Preferred Stockholder:
National Bank of Commerce, One Commerce Square, Memphis, Tennessee 38150
6.1 Percent Class "B" Preferred Stockholder:
Commercial and Industrial Bank, 200 Madison Avenue, Memphis, Tennessee 38103
4.7 Percent Class "B" Preferred Stockholder:
Tri State Bank of Memphis, 180 South Main Street, Memphis, Tennessee 38103
100 Percent Class "C" Preferred Stockholder:
Southern Cooperative Development Fund, Inc., 1006 Surrey Street, Lafayette, Louisiana 70501
Manager:
Valley Management Systems, Inc., 8 North Third Street, Memphis, Tennessee 38103

The Applicant, a Tennesse corporation with its principal place of business at 8 North Third Street, Memphis, Tennessee 38103, will begin operations with $1,250,000 of paid-in capital and paid-in surplus derived from

the sale of 5,000 shares of common stock, 6,500 shares of Class "B" preferred stock, and 1,000 shares of Class "C" preferred stock.

The Applicant will conduct its activities primarily in the State of Tennessee.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

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 Investment Act of 1958, 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 operations of the Applicant under this 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, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Memphis, Tennessee.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-27274 Filed 10-1-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD (82-094)]

Towing Safety Advisory Committee; Appointment of Members

AGENCY: Coast Guard, DOT.

ACTION: Notice of appointment of members.

SUMMARY: The Secretary of Transportation has announced the appointment of nine members to the Towing Safety Advisory Committee (TSAC), to fill vacancies which will occur after October 6, 1982. TSAC advises the Secretary on rulemaking matters related to shallow-draft inland and coastal waterway navigation and towing safety. The notice soliciting applications for the vacancies was published on May 10, 1982 (47 FR 29061).

SUPPLEMENTARY INFORMATION: Persons receiving appointment to the committee are: William A. Creelman, National Marine Service Inc.; David S. Field, Lake Providence Marine Terminal Co.; Paul Giordano, P.+F. Giordano Market; Captain John G. Graham, Gulfcoast Transit Co.; Charles F. Lehman, American Commercial Barge Line Co.; Austin P. Olney, LeBoeuf, Lamb Leiby and MacRae; Robert W. Sanders, Turecamo Coastal & Harbor Towing Corp.; Steven Scalzo, Foss Launch and Tug Co.; Captain William F. Tuttle, Local 333, United Marine Division.

FOR FURTHER INFORMATION CONTACT: Captain Christopher M. Holland, Executive Secretary, Towing Safety Advisory Committee (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426-1477.

Dated: September 28, 1982.

Bruce P. Novak,

Deputy Executive Secretary, Marine Safety Council.

[FR Doc. 82-27173 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. IP82-19; Notice 1]

Dunlop Tire & Rubber Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Dunlop Tire and Rubber Corp. of Buffalo, New York, has petitioned 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 571.119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.5 of Standard No. 119 requires tires to be marked with certain information on each sidewall. Dunlop has produced 14,869 tires with an incorrect letter designating the tire load range. The tires are marked "6PR, Load Range C" but are in fact 4 PR, Load Range B. The tires involved are all 31x11.50R15LT, with trade names of Dunlop RV Radial Rover, Remington Wide Brute RV, and Centennial Canyon Climber RV.

Dunlop argues that the noncompliance is inconsequential as the correct maximum load and inflation appears on both sidewalls. The tread labels correctly identify the tires as Load Range B.

Interested persons are invited to submit written data, views and arguments on the petition of Dunlop Tire and Rubber Corp. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Art Neill and Taylor Vinson, respectively.

Comment closing date: November 3, 1982.

(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 September 27, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-27286 Filed 10-1-82; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 192
Monday, October 4, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, October 5, 1982.

PLACE: Commission Conference Room No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Ratification of Notation Vote/s.
2. Freedom of Information Act Appeal No. 82-4-FOIA-22-NO, concerning a request for information from a client's Title VII files.
3. A Report on Commission Operations by the Acting Executive Director.

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

(In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides recorded announcements a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued September 28, 1982.

[S-1406-82 Filed 9-30-82; 10:30 pm]

BILLING CODE 6570-06-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Thursday, October 7, 1982, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: September 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S-1408-82 Filed 9-30-82; 12:54 pm]

BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, October 7, 1982.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Summary Agenda: Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion agenda:

1. Proposals regarding Regulation B (Equal Credit Opportunity) (Proposed earlier for public comment; Docket Nos. 0203 and 0185):

A. Interpretations of credit scoring systems and selection of reasons for adverse action; and

B. Withdrawal of proposed amendments on business credit exemptions.

2. Proposed response to recommendations by the General Accounting Office concerning bank merger application procedures.
3. Proposal to extend, with revisions, the Quarterly Survey of Number of Selected Transaction Accounts (FR 2071a), and eliminate the Quarterly Survey of Sources of Funds for New NOW and ATS Accounts (FR 2071b).
4. Proposal to discontinue the Daily Deposits Report from Selected Large Edge Act Corporations in New York City (FR 2008).
5. Proposal to extend the Monthly Survey of Industrial Electricity Use (FR 2009A, B).

Discussion Agenda:

6. Consideration of proposed Statement of Policy on Banking Market Extension Mergers and Acquisitions. (Proposed earlier for public comment: Docket No. R-0386).

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: September 30, 1982.

James McAfee,

Associate Secretary of the Board.

[S. 1407-82 Filed 9-30-82; 12:49 pm]

BILLING CODE 6210-01-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 4 p.m., Wednesday, October 13, 1982.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigations 701-TA-189 and 731-TA-104/106 (Steel Rails from the European Community, the Federal Republic of Germany, France, and the United Kingdom)—briefing and vote.
6. Investigation 337-TA-108 (Certain Vacuum Bottles and Components Thereof)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1410-82 Filed 9-30-82; 3:27 pm]

BILLING CODE 7020-02-M

5

LEGAL SERVICES CORPORATION

Committee on Operations and Regulations

TIME AND DATE: 11 a.m.-1 p.m., Saturday, October 2, 1982.

PLACE: Indian Pueblo Cultural Center, Inc., 2401 12th Street, Northwest, Albuquerque, New Mexico 87102.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Approval of Minutes.
3. Congressional Update.
4. Amendments to Part 1612.4 of the LSC Regulations regarding Legislative and Administrative Representation.

CONTACT PERSON FOR MORE INFORMATION: Anne Tracy, Office of the President, (202) 272–4040.

Dated: September 24, 1982.

Clint Lyons,

Acting Vice President.

[S–1411–82 Filed 9–30–82; 3:27 pm]

BILLING CODE 6820–35–M

6

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–23]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 42865, September 29, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, October 5, 1982.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Collision of a Southeastern Pennsylvania Transportation Authority Commuter Train with a Gasoline Truck, Southhampton, Pennsylvania, January 2, 1982, and proposed recommendation letters.
2. *Highway Accident Report:* Collision of Long Island Commuter Train No. 4602A and a Ford Van, Herricks Road Crossing, Mineola, N.Y., March 14, 1982, and proposed recommendation letters.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

September 30, 1982.

[S–1409–82 Filed 9–30–82; 12:54 pm]

BILLING CODE 4910–58–M

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on October 21, 1982.

PLACE: Suite 316, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634–4015.

Dated: September 30, 1982.

[S–1413–82 Filed 9–30–82; 3:53 pm]

BILLING CODE 7600–01–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m. on October 14, 1982.

PLACE: Suite 316, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634–4015.

Dated: September 30, 1982.

[S–1412–82 Filed 9–30–82; 3:53 pm]

BILLING CODE 7600–01–M

federal register

Monday
October 4, 1982

Part II

Federal Communications Commission

Public Mobile Service; Revision and Update

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 80-57; FCC 82-349]

Public Mobile Services; Revision and Update

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to revise and update Part 22 of its rules ("Public Mobile Service"). These proposed revisions will serve the public interest by simplifying the rules, placing them in plain language, bringing the rules up to date with current technology, reducing costs to applicants and staff, and expediting the administrative processes related to the public mobile service.

DATES: Comments are due by November 8, 1982 and replies by December 8, 1982.

ADDRESS: Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Michael A. Menius, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers, Miscellaneous common carriers, Mobile radio service, Offshore radio telecommunications service, Radio common carriers, Rural radio service.

Adopted: July 29, 1982.

Released: September 8, 1982.

By the Commission:

1. In this notice we propose to revise Part 22 of the rules ("Public Mobile Radio Services"). These revisions, which are set forth in the attached Appendix, are proposed in order to rewrite the rules in plain language, to bring the text of the rules up to date with existing technology, and to add or revise definitions to explain more fully the meaning of certain rules.

2. The Commission requested general comments and suggestions for rules revisions in a notice of inquiry released February 21, 1980.[1] The Mobile Services Advisory Committee met on November 9, 1981, and suggested many specific rule changes. Some committee members also submitted written comments on how certain rules should be amended.

3. As originally conceived in the NOI, this proceeding would have been a "revision and update project," not "a catchall rulemaking that encompasses every revision of Part 22 that might conceivably be desirable." While we still do not cover certain issues which arise under this section, such as changing frequency allocations, we propose far more extensive changes than contemplated in the NOI. There are several reasons for this decision.

4. First, in 1980 Congress enacted two laws which bear directly on regulation of Public Mobile Radio Services under Part 22: the Paperwork Reduction Act, Pub. L. 96-611, and the Regulatory Flexibility Act, Pub. L. 96-354. The former directs us to review all recordkeeping requirements and to reduce or eliminate those requirements where possible; the latter admonishes up to adjust the impact of our regulations to minimize their burden on small entities.[2] Because most of the more than 700 PMRS licensees are small entities, and because Part 22 imposes a number of recordkeeping requirements, a comprehensive reassessment of the Regulations is consistent with both the letter and the spirit of the two laws.

5. Second, PMRS is a dynamic, growing industry. We have found in administering Part 22 that the regulatory process frequently impedes the deployment of new services and facilities to the detriment of carriers and consumers alike. We believe, therefore, that we should revise the regulations now in anticipation of ever-accelerating growth and change in the RMRS industry.

6. Third, the PMRS industry is highly competitive. There are as many as five to ten carriers in the largest communities, and there are few cities in which one carrier is dominant. Recent Commission decisions have made available more spectrum than ever before,[3] and there is no evidence that potential entrants are barred by lack of spectrum or high entry costs. Given the competitive state of the industry, it is incumbent upon us to determine whether we can reduce or eliminate government regulation in favor of the self-regulation characteristic of a competitive marketplace.[4]

7. Finally, a comprehensive review enables us to rewrite in plain language where required and to blend all the amendments separately promulgated in recent years into the document. Part 22 will now be easier to understand and to use. Toward this end, we propose to incorporate in the Rules specific policies for PMRS which have been adopted in various proceedings by which have not resulted in Rule amendments. In other words we propose formal codification of relevant decisions which have not heretofore been easy to locate. If Part 22 is properly drawn, no one should ordinarily have to look beyond the Rules and the application form to find all the policies and requirements applicable to PMRS licensees.

8. In addition to the specific rules, we propose to add a topical index, as an aid to locating pertinent rules sections. In this notice, we propose the index list without (in most cases) supplying references specific to rules sections. We seek comment on any additional terms which should be added to the list. When we release a Report and Order publishing revised rules, the topical index will include a complete listing or references to rules sectioins.

9. As a result of the rules revisions, there will also be revisions to application Forms 401 (for construction permit) and 403 (for license). In this notice, we do not discuss each revision to these applications; however, we do attach revised application forms for public comment. We may well implement the new forms in advance of a final decision on the rest of the rules because the need for these form revisions is particularly pressing. Parties may comment separately and informally on the proposed forms if they wish to do so.

10. The proposed rule changes fall into two categories: revisions which clarify the language in the rules without reflecting policy change, and revisions which propose some policy change (e.g., elimination of reporting requrements). The explanation which precedes each proposed rule will discuss the nature of the propsed revision.

11. The attached appendix discusses the proposed revisions in detail. We present here a brief discussion of some of the more significant revisions, with references to the appropriate portion of the appendix.

12. *Elimination of the double filing process to obtain license.* Applicants will file an application Form 401, obtain a construction permit from the Commission, and then simply notify the Commission when construction is completed. The postcard notification

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[1] "Notice of Inquiry" CC Docket No. 80-57, 45 FR 14074, March 4, 1980.

[2] Under the policy embodied in the Regulatory Flexibility Act, we have proposed to reduce or eliminate the Form L Report required of PMRS licensees. CC Docket No. 82-85, FCC 82-77, relesased February 22, 1982.

[3] *See* Cellular proceeding, CC Docket No. 79-318, 86 FCC 2d 469; 35 MHz proceeding, CC Docket No. 80-189, *Report and Order*, Mimeo 29579, released July 15, 1981; and 900 MHz proceeding, CC Docket No. 80-183, *First Report and Order*, Mimeo 31355, released May 14, 1982.

[4] *See* Competitive Carrier rulemaking, CC Docket No. 79-252.

form, combined with the construction permit, will constitute the license, which becomes effective immediately. *See* "Proposed revision of Form 401," as explained in the appendix.

13. *Elimination of trafficking rules* and streamlining of the procedures related to assignments and transfers of control. These revisions will ensure that, when a marketplace decision is made to buy or sell a communications system, the transaction can be accomplished promptly without regulatory delays. We will at the same time review any such tranaction for basic public interest considerations. *See* "§ 22.39 Transfer of control or assignment."

14. *Deletion of operator log requirements.* These rules specify procedures which radiotelephone operators must follow in keeping logs and performing other duties. These requirements have been outdated by advances in technology, whereby many facilities are now automated and are not run by operators. We therefore propose to remove such requirements from the rules. *See* "§§ 22.118(d), 22.205(h)(3), and 22.208(g) Operator log requirements."

15. *Adoption of a general standard of licensee responsibility* for operation and maintenance of authorized facilities. We propose to delete operator license requirements and to delete the existing detailed requirements sepcifying what procedures the licensee must follow to keep its facilities in working order. *See* "§ 22.205 Operator and maintenance requirements (licensee responsibility)."

16. *Adoption of a rule permitting incidental services* to be provided by Part 22 licensees so long as public mobile service is not degraded. In recent years the Mobile Services Division has received more and more requests from licensees for permission to provide indicental communications services which are clearly helpful to the public (*e.g.*, whether information) and which will not interfere with the licensees' duties to their subscribers. We propose to add a rule which adopts a uniform policy for such incidental services. *See* "§ 22.308 Incidental communication services."

17. *Elimination of the "secondary basis" limitation* on two-way frequencies allocated in § 22.501. We propose to revise this rule so as to maintain the present allocation of frequencies for two-way service but also to permit carriers to use these frequencies for one-way service where the public requests it. *See* "§ 22.501 Secondary basis paging service."

18. *Elimination of the priority of service rules.* The present rule requires carriers to maintain waiting lists which are based on priorities which may no longer be appropriate. Recent allocations should relieve any frequency shortage in these radio services. We therefore propose to eliminate the seven categories of service priorities. *See* "§ 22.512 Order of service."

19. *Deregulation of rural radio licensing* in cases involving little potential for interference. Most subscribers to rural radio service operate on low power systems which pose little if any interference potential. We propose to eliminate the licensing requirement for such systems. We will still require that all such subscribers operate without causing interference and in compliance with all Commission rules and policies. *See* "§ 22.600 Deregulation of rural radio service."

20. *Adoption of waiver policy concerning the wireline-nonwireline "fence" allocation.* Under this proposal, a licensee would be permitted, where it is technically feasible, to request an additional frequency on the other side of the "fence" allocation if such a frequency is unassigned. This proposal is an attempt to permit greater flexibility in making unused frequencies available. We do not at this point propose to eliminate the separate allocation structure but will examine this issue in a later proceeding. *See* "§ 22.501(n) Waiver of frequency allocation."

21. *Streamlining of procedures related to major amendments and the cut-off rule.* We propose that "later-filed" applications no longer be considered as major amendments to earlier applications, thereby invoking the cut-off rule and resulting in dismissal of earlier applications. Instead, the later-filed application will be judged on its own merits and the earlier application will proceed toward comparative hearing. *See* "§ 22.23 Major amendments and the cut-off rule."

22. We have attempted to eliminate unnecessary duplications within the rules, but we have not systematically eliminated duplication in each place where it occurs in the rules. In fact, in some cases, we have proposed to include a similar sentence or paragraph in two different areas of the rules. We have done this because we believe the rules should first of all be helpful. If a subject occurs in two different contexts, we have proposed to include that subject in two parts of the rules rather than force a member of the public to second-guess the Commission as to where its rules are located. This approach also avoids excessive cross-referencing within the rules.

Regulatory Flexibility Act-Initial Analysis

23. *Reason for Action and Objective.* The Commission is seeking to eliminate unnecessary forms, information gathering, and regulatory burdens wherever possible in the public mobile radio service. The policy options under consideration will greatly streamline the administrative process affecting these licensees and permit self-regulation wherever possible. The objectives are to eliminate unnecessary regulations and policies and to provide service to the public in the most efficient, expeditious manner possible.

24. *Legal Basis.* The authority for this proposed rulemaking is contained in §§ 1, 4(i), 4(j), 303(g), and 303(r) of the Communications Act of 1934, as amended.

25. *Small Entities Affected and Potential Impact.* The impact of the proposed rules revisions will be on all PMRS applicants and licensees and on members of the public receiving mobile service. Existing and potential applicants for this service range in size from single individuals and small partnerships to large multi-million dollar corporations. The proposed alternative will simplify the language of the rules and will simplify and reduce both the paperwork and the administrative procedures for obtaining licenses and serving the public.

26. *Relevant Federal Rules which Overlap, Duplicate or Conflict with this Action.* None.

27. *Reporting, Record-Keeping and Compliance Requirements.* This action will reduce or eliminate reporting and record-keeping requirements. Applicants will no longer report on their maintenance procedures or file copies of settlement agreements for approval. Licensees will no longer be required to maintain separate business records for these services. Licensees will no longer be required to comply with specific testing and maintenance procedures; instead, they may make their own decisions on these matters without reporting to the Commission. This action also eliminates many reports which must currently be made to the Commission's local engineer-in-charge.

28. *Alternatives that would lessen impact:* None.

29. All interested persons are invited to file written comments on or before November 8, 1982. Reply comments should be filed on or before December 8, 1982. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into

account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

30. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally,* Section 1.1231 of the Commission's rules, 47 CFR 1.1231.

31. In accordance with the provisions of 47 CFR 1.419(b) an original and six copies of all comments, replies, pleadings, briefs and other documents filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, D.C. 1919 M Street, N.W.)

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Rules Discussion

Proposed revision of Form 401 (Brief Explanation)

Members of the Mobile Services Advisory Committee have suggested the elimination of the present two-stage procedure whereby applicants initially file Form 401 for a construction permit and, after construction and service tests, file another form (403) to obtain a station license. Committee members suggested that this process involves duplicative paperwork and can be streamlined so that only one application is filed and processed. This suggestion has merit, and we propose the following: Applicants will file Form 401 and, upon receipt of a construction permit, will construct and perform tests on the facilities. Upon completion of tests, the permit holder will notify the Mobile Services Division that tests are completed and that the facilities are constructed and operating in conformance with the specifications in the Form 401. If the constructed facilities differ in any way from the specifications in the Form 401, the permit holder will indicate (as part of the notification) what the changes are. We propose a shortened form 408 (attached) to be used for this purpose. The permit holder will retain a copy of the notification form 408 which, along with the permit, will at that point constitute the license. The staff will not issue an additional piece of paper, and no additional filing or processing will be required. We seek comment on the feasibility of this change in licensing procedure. The rules which implement this proposal are included in our discussion of § 22.9(b) below.

This proposal is related to other proposals throughout this Notice which simplify or reduce the amount of information currently required on either Form 401 or Form 403.

The staff is concerned with the possibility of uncompleted construction and proposes the following: Construction permits will be issued on the express condition that construction be completed within the period authorized or as extended by the Commission (Our proposals on extensions are discussed elsewhere in this notice.). The data base will be reviewed monthly for expired permits, and the related frequencies will be listed on public notice as again unassigned and available. No hearing rights will attach to holders of expired construction permits, since they were accepted subject to the condition stated above. We believe that this procedure will guard against any possible warehousing of frequencies without triggering unnecessary hearings.

Engineer's telephone number. Form 401 presently requires that the person responsible for preparing the engineering information provide his or her name and address. This requirement enables the staff to communicate directly with the engineering personnel. This is an effective method of expediting the processing of an application in cases where some engineering matter can quickly be cleared up and the application can then be granted. With these considerations in mind, we propose an additional requirement, that the person responsible for preparing the engineering information also furnish a telephone number as part of the Form 401. We believe this requirement will in many cases enable the staff to expedite processing by substituting a telephone call for a letter and that service to the public will begin sooner as a result.

We also propose to revise question 52, which refers to need showings, surveys, loading studies and public interest showings. The Commission has recently revised certain of these requirements in Dockets 80–183 (*Memorandum Opinion and Order,* released May 14, 1982, FCC 82–202) and 20870 (*Second Report and Order,* released May 5, 1982, FCC 82–207). We propose to revise this question to conform to the current need requirements.

PART 22—PUBLIC MOBILE SERVICE

Title of Part 22

We propose to retitle Part 22 as Public Mobile Service. The term "radio" is unnecessary and does not add to the clarity of the term.

The new title conforms to the terminology used in the definitions (§ 22.2) and throughout Part 22.

47 CFR is amended by titling Part 22 as "Public Mobile Service".

47 CFR, Part 22 is amended by retitling the following subparts to the terms proposed in § 22.2:

Subpart G—Public Land Mobile Service

Subpart L—Offshore Radio Service

1. 47 CFR is further amended as set forth below.

§ 22.0 Authority and scope of Part 22.

Explanation

This section explains the Commission's authority to promulgate

Part 22 of the Rules and sets forth the scope of these rules. We have simplified some of the language, placed some sections in a more logical order, and added a new sub-section (c) which makes it clear that Part 22 applies only to stations authorized under this part. Also, a new sub-section (d) informs the public that the Mobile Services Division is the Commission staff link with the rules and may be contacted if questions arise.

2. § 22.0 is revised:

§ 22.0 Authority and scope.

(a) The rules in this part are issued pursuant to Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications and to regulate radio transmission and issue licenses for radio stations.

(b) The purpose of the rules in this part is to prescribe the conditions under which portions of the spectrum are made available for domestic common carrier radio communications which utilize transmitters on land or in specified offshore coastal areas within the continental shelf, and certain other situations as authorized under this part.

(c) The rules in this part apply only to stations authorized under this part. Rules in a subpart apply only to stations authorized under that subpart.

(d) Correspondence relating to this part or authorizations issued under this part may be sent to the Mobile Services Division, Federal Communications Commission, Washington, D.C. 20554.

(e) Unless otherwise specified, the section numbers referenced in this part are contained in Chapter I, Title 47, of the Code of Federal Regulations.

§ 22.1 Other applicable rule parts (new).

Explanation

We propose to add a rule which briefly explains where to find certain categories of information outside Part 22.

3. § 22.1, a new rule, is added, to read as follows:

§ 22.1 Other applicable rule parts.

Other Commission rule parts of importance that may be referred to with respect to licensing and operations in radio services governed under this part include the following:

(a) Part 0 of the Commission's Rules describes the Commission's organization and delegations of authority. This part also lists available Commission publications and standards and procedures for access to Commission records, and location of Commission Field Offices.

(b) Part 1 includes rules of practice and procedure for adjudicatory proceedings including hearing proceedings, rule making proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; and the requirements for environmental impact statements.

(c) Part 2 contains the table of frequency allocations and special requirements in international regulations, agreements, and treaties. This part also contains standards and procedures for marketing of radio frequency devices, and for obtaining equipment type acceptance and type approval.

(d) Part 5 contains standards and procedures for obtaining experimental authorizations.

(e) Conditions under which the operations of incidental and restricted radio devices are permitted are in Part 15.

(f) Part 17 contains detailed requirements for construction, marking, and lighting of antenna towers.

§ 22.2 Definitions.

Explanation

The definitions for Part 22 need to be updated. There are many obsolete terms and terms that are not used. There are a number of definitions not used in Part 22. Most are left over from when Parts 21 and 22 were combined. We propose to delete these terms.

More importantly there are ambiguous or undefined terms. These will be corrected. Many terms are not the commonly used terms.

4. § 22.2 is amended by adding, revising, and removing certain definitions, as follows:

§ 22.2 Definitions.

Airborne station. A mobile station licensed for use only on an aircraft.

Air-ground radiotelephone service. A public radio service between a base station and airborne mobile stations.

Antenna gain. Removed.

(This term has a well understood engineering meaning and does not need to be defined.)

Antenna structure. The antenna, its supporting structure, and anything attached to it.

(The only changes are to translate "surmounting appurtenances" and "radiating systems" into plain English.)

Assigned frequency. Removed.

(This term has a plain language meaning and does not need to be formally defined in Part 22.)

Assignment. The transfer, by any means, of an authorization from the present holder to another person as defined in § 3(i) of the Communications Act.

(Assignment of authorization and transfer of control have never been explicitly defined. We do so here. We recognize that these terms are difficult to define, especially transfer of control, since they turn on the facts of the particular case.)

Authorized power. The maximum power a station is permitted to use. This power is specified in the station's authorization.

(This definition restates the present definition. We have not included the last sentence of the present definition because the proposed definition is precise without it.)

Auxiliary test station. A fixed station used for test transmissions.

(We have rewritten the definition and moved the substantive requirements to a new section, § 22.524, Auxiliary Test Station.)

Bandwidth occupied by an emission. Deleted, see *Authorized bandwidth.*

Base station. A land station in the public mobile service communicating with authorized mobile and fixed stations.

Bit rate. Removed.

(This term is not used in Part 22.)

Carrier. Removed.

(This term is only used to define carrier frequency. Therefore the terms have been combined.)

Carrier frequency. The output of a transmitter when the modulating wave is made zero.

(The present definition uses 3 different definitions—one is enough. Also, the first two definitions are redundant and the third says essentially the same thing. The proposed definition is sufficient.)

Channel occupancy time. The time a channel is utilized for the transmission of communications. It does not include time waiting for a channel to become available.

(This term replaces "holding time" which has not been adequately defined in these rules. There have been questions about what is included in "holding time," especially whether it includes time actually used for a conversation or other transmissions, or the total time between a request for a conversation or a page and when the request is filled. We have clarified this.)

Construction permit. An authorization granting permission to construct and test a radio station according to these rules and the terms of the construction permit.

(This term is used throughout these rules but has not been defined.)

Control point. The location at which the base station is controlled and supervised by the licensee.

(The only change is to remove the requirement of an operator to allow for automated systems. This is necessary to respond to technological development.)

Control station. A fixed point-to-point station used to control a remote base station transmitter, and/or to transmit information about the base station to a control point or other location where the base station is controlled.

Coordination distance. Removed.

(This term is not used in Part 22.)

Dispatch point. See *dispatch station.*

Dispatch station. A fixed station operating on a base station frequency and operated by the subscriber to communicate with the subscriber's own mobile station or stations.

(Dispatch station is the term used in the rules, so, under the term *dispatch point,* we refer the reader to *dispatch station.* We also propose a simplified definition of *dispatch station.* It is unnecessary to say that the station is under the control and supervision of the licensee. This is a substantive rule, and it is in § 22.515.)

Domestic public land mobile radio service. Removed.

(See *public land mobile service).*

Domestic fixed public service. Removed.

Domestic public mobile radio services. Removed.

(See *public mobile services.)*

Drop point. Removed.

(This term is not used in Part 22.)

Earth station. Removed.

(This term is not used in Part 22.)

Facsimile. Removed.

(This term needs no definition. It is not used in the proposed rules. Instead, this type of communications is referred to by its emissions designator, A4 or F4.)

Fixed earth station. Removed.

(This term is not used in Part 22.)

Fixed station. A station at a fixed location.

(There are two definitions for fixed station, neither of which is accurate. "Fixed station" means a station operating from a fixed location, regardless of the type of station it communicates with.)

Frequency deviation. The maximum deviation from the center of the frequencies emitted due to modulation.

(This term is used but not defined in Part 22. We propose the above definition.)

Frequency tolerance. The maximum permissible variation of the carrier frequency expressed as a percentage or in hertz.

(This definition is rewritten in plain English.)

General communication. Removed.

(This definition can be replaced by using *two-way voice communications* whenever *general communications* is now used. The present language is unnecessarily long and the term is never used, whereas *two-way voice communications* is.)

Interoffice station. A fixed station in the rural radio service used for the interconnection of telephone central offices.

(The proposed definition is written in plain language. No substantive changes have been made.)

License. An authorization granting permission to operate a radio station according to these rules and the terms of the license.

(This term is used in Part 22 but has not been defined.)

Local television transmission service. Removed.

(This term is not used in Part 22.)

Message center. Removed.

(We deregulated the message center requirement by deleting § 22.513. This definition is no longer needed and is deleted.)

Miscellaneous common carriers. See *radio common carrier.*

(This term is outdated. Such carriers today are referred to as radio common carriers. We propose to eliminate the definition and cross-reference to "radio common carrier.")

Mobile earth station. Removed.

(This term is not used in Part 22.)

Mobile microwave auxiliary station. Removed.

(This term is not used in Part 22.)

Mobile service. See *public mobile service.*

(This term is not a precise one but is commonly used to refer informally to the various services governed by Part 22. We propose to delete the present definition for "mobile service" and simply cross-reference to "public mobile service.")

Mobile station. A station intended to be used while in motion or during halts at unspecified points.

(This definition is unchanged except for removing the words "in a mobile service." These words are unnecessary, since all radio services included under Part 22 are mobile services. The proposed definition is sufficiently general to include "portable" units.)

Multipoint distribution service. Removed.

(This term is not used in Part 22.)

Offshore central station. A fixed station in the offshore radio service for interconnecting offshore subscriber stations with each other and by means other than offshore radio with the land telephone system.

(This term has been rewritten to give a better picture of how an offshore central station operates.)

Offshore mobile station. A station in the offshore radio service intended to be used while in motion, or during halts at unspecified points, or on offshore subscriber stations which are fixed or temporarily fixed.

(This term is presently defined in terms of boats which go from oil rig to central office to oil rig on various errands related to the offshore oil industry. In practice, the majority of offshore radio service does not involve boats (although a central office does occasionally contact a company boat). Instead, these frequencies are usually used for communication between the central office and the various oil rigs, which are mobile only in the sense that they are from time to time relocated within the Gulf of Mexico. We propose to broaden the definition of "offshore mobile station" so that it is more in keeping with actual operations within this radio service.)

Offshore radio service. A public mobile radio service for communication with mobile stations in the offshore coastal waters of the United States or its possessions.

(This term replaces the longer and less descriptive term *Offshore radio telecommunications service.* (ORTS))

Offshore radiotelecommunications service. Removed.

(Replaced by *offshore radio service.)*

Offshore repeater station. Removed.

(This definition is rarely if ever used in these rules. We propose to delete it.)

Offshore private line service. Removed.

(This definition is duplicative of another definition in the rules, "private line services." We believe the latter term adequately defines the concept and propose to delete "offshore private line service." We also propose to add a new rule, § 22.1008, "Priority of service." which will specify that private line service is permissible, under certain conditions, in the offshore radio service.)

Offshore subscriber station. A fixed or mobile station in the offshore radio service normally used for communication with an offshore central station.

(This definition has been translated to plain English, incorporating the same ideas discussed in our proposed revision of the definition of "offshore mobile station.")

Pager. A mobile receiver for paging communications, also known as a "beeper."

(This definition adopts the word commonly used. There is no equivalent in the present rules.)

Permit. See *construction permit.*

Point-to-point microwave radio service. Removed.

(This term is not used in Part 22.)

Public correspondence, public message service.

(These terms are not used in part 22. In any case they have well understood meanings.)

Public land mobile service. A public communication service for hire between land mobile stations wherever located and their associated base stations which are located within the United States or its possessions, or between land mobile stations in the United States and base stations in Canada.

(This term is proposed to replace *Domestic public land mobile radio service* (DPLMRS). DPLMRS is an unnecessarily long term as evidenced by the need to make an acronym of it. "Radio" can be assumed. "Domestic" is not entirely correct as trans-border communications are permitted and in any case, it does not distinguish this service from others; that is, there is no international land mobile service. The language of the definition has not been changed.)

Public Mobile Service. The radio services licensed under this part. These services include the Public Land Mobile, Rural Radio, and Offshore Radio Services.

(We propose to retitle Part 22 as Public Mobile Services. Presently the title is "Public Mobile Radio Service." The term "radio" is unnecessary and does not add to the clarity of the term. This revised title conforms to the terminology we propose for all the services.)

Radiocommunications. Removed.

(We propose to delete this term from the definitions section of Part 22. "Radiocommunications" is a general term with no specialized meaning unique to Part 22. Nor is the term used frequently in connection with the public mobile services.)

Radio station. Removed.

(If we were to retain this term we would use the term "station." "Station" is used in the rules while "radio station" is not.

We believe this term need not be defined in Part 22. It has a well-known meaning. Most of its uses are defined, *e.g.*, base station, control station, mobile station.

The meaning of "station" is a practical one based on administrative convenience. Sometimes all facilities for one location are a "station" and at times they are not. Likewise, the same call letters are applied to more than one location, and at times not. It is difficult to find a definition with sufficient flexibility that is not so broad as to be meaningless.

Since "station" has no technical meaning we do not need to define it.)

Rated power output. Normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum adjustment and operation as specified by its manufacturer.

(We propose to simplify this definition without making substantive changes.)

Record communications. Removed.

(This term is not used in Part 22.)

Reliable service area. The area defined by the field strength contour within which the reliability of communication service is 90 percent, i.e., the area within which nine out of every ten calls initiated by the base station can be satisfactorily received by the mobile unit.

(This term is the one used in the rules but not in the definitions. It replaces *service area of base station.*)

Service area of base station. Removed.

(We propose to replace this definition with the term "reliable service area," which is more typically used.)

Special temporary authority (STA). An authorization granting permission to operate a station for up to 90 days when circumstances require immediate or temporary operation of a station.

(We proposed this definition because this term is used but not defined. The definition is drawn from § 22.25.)

State certification. Officiel authorization by a State or its public utilities commission for a common carrier to provide service within that State. Certification requirements vary from State to State, and some States require no certification.

(State certification is used throughout Part 22 but not defined. We propose this definition.)

Symbol rate. (This term is not used in Part 22.) Removed.

Telegraphy, telephony. Removed.

These terms need no definition. Whenever the rules limit the type of transmissions, the terms "voice" and "tone" or "A3, F3" and "A1, F1" are used instead of these terms. Additionally, we have proposed to delete the sections pertaining to telegraphy.

Telemetering. Removed.

(This term is not used in Part 22.)

Television. Removed.

(This term is not used in Part 22.)

Television non-broadcasting pickup station. Removed.

(This term is not used in Part 22.)

Television pickup station. Removed.

(This term is not used in Part 22.)

Television STL (studio transmitter link). Removed.

(This term is not used in Part 22.)

Temporary fixed station. A fixed station which is to remain at a single location for less than six months.

(This term appears in Part 22 but is not presently defined. We propose the above definition.)

Transfer of control. A transfer of a controlling interest in a corporation or partnership which is not an assignment.

A change from less than or 50% ownership to 50% or more ownership shall always be considered a transfer of control.

In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership, and the relationships of the owners, including family relationships.

(See discussion of definition for assignment of authorization. We explicitly provide that a change from 50% to 51%, and from 49% to 50% or more is a transfer of control. We consider exactly 50% to be a controlling interest even if it is a negative control. In widely held corporations a percentage of stock much less than 50% can be a controlling interest. Stock owned by a family will usually be considered to be a single block. We recognize that the application of these standards may vary according to the facts of a particular case. We request comment on what standards are appropriate.)

Wireline common carrier. Common carriers which are in the business of providing local exchange telephone service.

(We propose to conform our terminology to that commonly used in the industry. This term has not been defined in § 22.2. In the frequency allocation § 22.501 (b), (c), (i), (j) this term is used. The language in the proposed definition is related to our discussion of § 22.501, "nonwireline and miscellaneous common carriers.")

Index

Explanation

We propose to add a topical index, as discussed in the preamble.

INDEX

§ 22.3 Station Authorization Required.

Explanation

We propose to restate this section in plain English.

Paragraph 22.3(a) is retained as proposed § 22.3.

Paragraphs 22.3(b) and (c) state that licenses shall generally be granted only to stations holding construction permits. This is redundant of § 22.9(a)(3) and 22.9(b) so we do not include § 22.3(b), (c), in our proposed rule.

Paragraph 22.3(d), dealing with transfer of control, is moved to § 22.39, where it more logically belongs.

5. § 22.3 is revised:

§ 22.3 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§§ 22.4, 22.13(a)(2), 22.400, 22.500, 22.600, 22.1000 Qualifications.

Explanation

We propose to rewrite §§ 22.4, 22.13(a)(2), 22.400, 22.500, 22.600 and 22.1000. Instead of stating that the licensee must be "legally, technically, financially and otherwise qualified," we propose to say that the applicant must be qualified under the Communications Act and the Commission's rules.

We propose to include in § 22.4 one general statement about qualifications and to delete similar language presently found in §§ 22.400, 22.500, 22.600 and 22.1000. We also propose to delete language concerning financial qualifications, because this requirement was eliminated in a prior rulemaking. *See* 80 FCC2d 152 (1980). However, see our discussion of developmental authorizations (§ 22.405).

Proposed paragraph 22.4(b) restates present § 22.4, which lists the prohibitions on alien ownership, as set forth in § 310(a), (b) of the Communications Act of 1934. There is no substantive change in this rule.

6. § 22.4 is revised:

§ 22.4 Eligibility.

(a) *General.* Authorizations will be granted upon proper application if:

(1) the applicant is qualified under the applicable laws and the regulations, policies and decisions issued under those laws;

(2) there are frequencies available to provide satisfactory service; and

(3) the public interest, convenience or necessity would be served by a grant.

(b) *Alien ownership.* An authorization may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any foreign government or the representative thereof.

(3) Any corporation organized under the laws of any foreign government.

(4) Any corporation of which any officer or director is an alien.

(5) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country.

(6) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

(7) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

7. § 22.13(a)(2) is revised:

(2) Demonstrate the applicant's qualifications to hold an authorization;

8. § 22.400 is revised:

§ 22.400 Eligibility.

Developmental authorizations may be issued to communications common carriers for experimentation leading to the development of a service regulated by this part.

9. § 22.500 is revised:

§ 22.500 Eligibility.

(a) Base stations and auxiliary test stations may be licensed to communications common carriers.

(b) Airborne mobile stations (or "air/ground stations") may be licensed to the individual user.

(c) Other mobile stations are licensed as part of base stations authorizations.

10. § 22.600 is revised:

§ 22.600 Eligibility.

Central office and interoffice stations may be licensed to communications common carriers. Rural subscriber stations may be licensed to common carriers or to the individual user of the service.

11. § 22.1000 is revised:

§ 22.1000 Eligibility.

Offshore central station licenses may be licensed to communications common carriers. Offshore subscriber stations may be licensed to common carriers or users of the service.

§ 22.9(b) License to cover construction permit.

Explanation

We propose to revise this rule to conform with the proposed revision of procedures concerning from 403. In discussing § 22.9(b), parties commented that, under the present rule, when an application for extension of construction permit (FCC form 701) has been filed, undue delay has been caused by waiting for the extension requested to be acted upon prior to filing a form 403 for a license to cover the construction permit. In some cases where only a few weeks extension was needed, permittees have had to wait months before their form 701 was approved and the form 403 (for a station license) could then be filed. We agree that this is an unnecessary delay. We propose to add language which will eliminate such delays. The proposed language will refer to the proposed form 408.

12. § 22.9(b) is revised:

§ 22.9 Standard application forms.

* * * * *

(b) License to cover construction permit. When construction has been completed, in accordance with the construction permit, the permittee shall so notify the Commission, using from 408. The permittee shall retain one copy of the notification form 408 which, along with the construction permit, will constitute the station license. When a construction permit has expired and a timely application for extension (FCC Form 701) has been filed, the notification form 408 may be filed regardless of whether FCC Form 701 has been acted upon.

* * * * *

§ 22.9(c)(1) Number of land mobile units served.

Explanation

This rule presently requires an applicant to include an estimate on the Form 401 as to how many land mobile units will be served during the license term. The staff, in issuing the license, authorizes the licensee to serve the number of land mobile units indicated on the application. If, during the license term, the carrier finds that the number of mobile units is coming close to surpassing the number authorized, the rule provides that the licensee must file another Form 403 requesting authorization to serve additional mobil units. We propose to eliminate this procedure, which is burdensome on licensees and requests information which is available from other sources. The Annual Report Form L provides periodic reports to the Commission as to the number of land mobile units in operation, so this information is sufficiently available through means which do not burden the "401–403" processing channel. We therefore propose to revise § 22.9(c)(1) and to eliminate the requirements that applicants specify on Form 401 the number of land mobile units to be served. We also propose to eliminate the requirement that licensees file Form 403 for authorization to serve additional mobile units. Under this revision, licenses will no longer specify the number of mobile units which may be served.

Individual land mobile units served by a carrier will be considered to be associated with that carrier's blanket

authorization. This approach is consistent with the individual license deregulation announced in CC Docket No. 79–259 and with the various statutory and treaty requirements discussed in that Docket. *Cf. Report and Order,* CC Docket No. 79–259, 77 FCC 2d 84 (1980).

This proposed revision is also related to our proposal to deregulate rural radio licensing. *See* discussion of § 22.600.

13. § 22.9(c) is revised:

(c) *License for mobile station.*

(1) *Land mobile stations.* These stations are considered to be associated with and covered by the authorization issued to the carrier serving the land mobile station. No additional authorization is required.

(2) *Airborne mobile stations.* Applications for a license for airborne mobile stations submitted by persons who propose to become subscribers to a common carrier service for public correspondence shall be filed on FCC Form 409. This form will also be used for the modification and renewal of such licenses. Such applications shall also be accompaned by the supplemental showing set forth in §§ 22.15(i)(2) and 22.15(i)(3).

§ 22.9(d) Modification of station license not requiring a construction permit.

Explanation

As suggested in the comments filed by Schwartz, Woods and Miller, we have clarified the applicability of this section to construction permits as well as licenses. We also propose to delete subsections (1) through (6) because of equivalent deletions proposed in various dicussions elsewhere in this notice.

We also propose to modify this rule so that it refers to the proposed notification form 408. *See* our discussion of § 22.9(c).

14. § 22.9(d) is revised:

(d) *Modification of authorization not requiring a construction permit.* Prior to the expiration of an authorization, an FCC Form 408 may be filed to make only those categories of changes to an existing station as listed below:

(1) Change in or additional emission;

(2) Request to delete or change antenna obstruction markings;

(3) Change in points of communications (Rural Radio Service);

(4) Correction of coordinates;

(5) Change of an authorized frequency; or

(6) Addition of frequencies for mobile transmitters.

§ 22.13(a)(6).

Explanation

This rule includes a list of cross-references to requirements found elsewhere in the rules. This list is not complete and thus is misleading. We believe the organizational improvements to Part 22, proposed in this notice, will be more helpful than the list presently found in this rule. We therefore propose to eliminate this list and substitute a general standard that applicants comply with the various requirements found throughout Part 22.

15. § 22.13(a)(6) is revised:

§ 22.13 [Amended]

(a) * * *

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable.

§ 22.13(f) State certification.

Explanation

We propose to make additions to this rule which will codify policy statements in several recent orders which discussed state certification issues. These order are: *Mobilfone Service, Inc.,* Mimeo 07273 (released February 23, 1981), *modified,* Mimeo 0011344 (Com. Car. Bur., released May 26, 1981); *Hazle-Tone Communications, Inc.,* FCC Mimeo 06645 (Com. Car. Bur., released February 10, 1981), *recon. pending; Alfred C. Cordon, Jr.,* 80 FCC 2d 328 (1980), *recon. denied,* FCC 82–218, released May 19, 1982, *appeal pending sub nom. Radio and Communication Consultants, Inc. v. FCC,* No. 82–1672 (D.C. Cir., filed June 16, 1982); and *Public Notice,* Mimeo 36626, Sept. 30, 1980. *See also* our discussion of §§ 22.43 and 22.44 for other state certification issues.

We also propose to simplify this rule by adopting one uniform standard to apply to all radio services in Part 22. As the rule now reads, there is a prior certification requirement for all services other than the public land mobile service. This language is out of date. The Commission's order implementing cellular service exempted this new service from the prior state certification requirement. 86 FCC 2d 469, p. 505, para. 83 (1981). The only other radio services covered by part 22 are the rural radio service and the offshore radio service, neither of which is involved in state certification procedures. We therefore propose to adopt a single standard which will govern all applicable cases.

16. § 22.13(f) is revised:

§ 22.13 [Amended]

* * * * *

(f) State certification.

(1) *General rule.* Permittees and licensees are required to comply with all applicable state certification requirements. Applicants may, but are not required to, include evidence of state certification when filing FCC Forms 401 or 408. The holder of a construction permit under this part must complete construction in accordance with § 22.43 of the rules. A licensee under this part must have all requisite state authority, and be in operation within 240 days of the date of the license grant, or the license will automatically expire and must be submitted for cancellation.

(2) *Denial of state certification.* A pending application will be returned as unacceptable for filing where the applicant is denied state certification necessary to construct and/or operate the proposed facilities, and the state appeal process has been exhausted. Such applications will not be retained on file while the applicant pursues subsequent state applications. Where an applicant has been denied the necessary state certification and has exhausted the state appeal process, the applicant shall not resubmit its application to the Commission until after obtaining state certification.

(3) *Applicant's duty to inform.*

(i) The applicant shall include in Form 401 information regarding any adverse action which has been taken regarding the state certification application.

(ii) The applicant shall promptly and fully advise the Commission if any adverse action regarding state certification is taken while the application is pending.

§ 22.13(g) Part-time management.

Explanation

This section requires a special showing when an applicant, partner or full time manager will not actively participate in the daily operation of the proposed station. We believe that requirement imposes an unnecessary burden on applicants, because our primary concerns are prevention of interference and provision of service to the public, rather than the specific details as to how licensees meet these responsibilities.

In this Notice of Proposed Rulemaking we propose to deregulate station operation and only require that the station be operated in accordance with the license and the rules. *See, e.g.,* discussion to § 22.15 (e), (f).

We therefore propose to delete § 22.13(g).

17. § 22.13(g) is removed.

§ 22.15(a) Site availability.

See discussion of § 22.20(b)(5), below.

§ 22.15(b)

Interference studies.

Explanation

This section requires applicants to file interference studies to demonstrate that the proposed facilities will not cause co-channel interference. We propose to add language requiring that the interference study be conducted within 60 days before the application filing date. This revision will prevent the submission of outdated interference studies which, because of the time which has elapsed since they were conducted, can no longer be reasonably construed as demonstrating the absence of co-channel interfernce.

We also propose to relax certain filing requirements in § 22.15(b)(2). This section requires applicants to file their supporting data and calculations as part of the applicant's interference studies. We propose that applicants no longer file these calculations but simply retain them and furnish them upon request to the Commission. We believe this proposal will reduce the size of the application and duplicating cost.

We also propose to add a list stating preceisely what information the applicant is expected to furnish as part of an interference study. This list was published in Public Notice No. 1110, on December 14, 1981. The list has proven to be a helpful guideline to applicants but does not appear in the present rules. We therefore propose to codify the list so that all applicants will have it readily available.

We also propose to reword § 22.15(b) in a more readable format, adding headings and uniform structure.

18. § 22.15(b) is revised:

§ 22.15 [Amended]

* * * * *

(b) Each public land mobile service application for a construction permit for a new base station or a major modification to an existing base station shall make the following showings:

(1) *co-channel facilities.* The application must explicitly state whether there are any co-channel facilities (whether existing or proposed by applications pending for more than 60 days from their public notice dates) within the following mileage separation standards:

(i) *two-way communication facilities:* the minimum mileage separation established by §§ 22.502 and 22.503.

(ii) *one-way communication facilities:* the lesser of 75 miles or the minimum mileage separation determined by applying the provisions of § 22.502 and the table shown in § 22.503(a).

(iii) 125 miles along any radial direction where the combination of effective radiated power in that direction and antenna height above average terrain in that direction exceeds the limit that is computed by applying the provisions of § 22.505 to that direction.

(2) *Interferences studies:*

(i) The application shall contain interference studies demonstrating that the proposed facilities will not cause harmful electrical interference to those co-channel facilities (existing or proposed) identified in response to paragraph (b)(1) of this section. The interference studies must use procedures consistent with § 22.504 and FCC Report No. R–6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service," by Roger B. Carey.

(ii) For each pair of base stations studied, the following data shall be provided:

(A) The name of the applicant or licensee.

(B) The geographic name of the location of the transmitter.

(C) The geographic coordinates.

(D) The call sign (if granted previously).

(E) The file number, if pending.

(F) The distance between the proposed station and the co-channel station.

(G) The radial bearing from the proposed station to the co-channel station.

(H) The radial bearing from the co-channel station to the proposed station.

(iii) The following figures shall be given relative to the interstation radial:

(A) The distance from the proposed station to its reliable service area contour (RSAC).

(B) The distance from the co-channel station to its RSAC.

(C) The distance from the proposed station to the RSAC of the proposed station.

(D) The distance from the co-channel station to the RSAC of the proposed station.

(E) For the point of intersection of the interstation radial and each RSAC:

(*1*) "R" (equation 8, Carey Report).

(*2*) Field strength of the undesired signal, in dBu.

(*3*) Ratio of (*2*) and the field strength of the protected contour in § 22.504 of the Rules.

(F) Any additional data that the applicant feels is necessary or desirable may be included.

(iv) All supporting data and calculations shall be retained by the applicant and furnished to the Commission upon request. The interference studies shall be conducted within 60 days of the filing of the application.

§ 22.15(c) Antenna structures.

Explanation

This proposed paragraph combines present §§ 22.15 (c) and (d), which both deal with antenna structures.

As proposed in the comments we have eliminated the requirement that the sketch show all antennas on a structure. The reasons for these requirements are no longer valid. The requirement of showing all antennas is burdensome when there are many antennas owned by various parties. Therefore, we eliminate this requirement.

We have deleted reference to types of antennas not used in Part 22.

Paragraph 22.15(c) does not now explicity apply to offshore radio stations. We propose to revise the language so it is clear that § 22.15(c) applies to all services under Part 22.

Paragraph 22.15(d) has been restated as § 22.15(c)(2) and entitled "FAA notification." This paragraph has been restated in plain language.

All of proposed § 22.15(c) has been conformed to proposed § 22.121, Replacement of Equipment, so that the filing requirements apply only to increases in antenna height and to new antennas not already on file with the Commission.

19. § 22.15(c) is revised:

§ 22.15 [Amended]

* * * * *

(c) Antenna height.

(1) *Sketch.* (i) Every application for a new antenna, an antenna increased in height, a new antenna structure, or an antenna structure increased in height shall include a vertical profile sketch.

(ii) The sketch shall include overall height, height of antenna, and height of the ground or the top of the supporting building. Heights shall be elevation above mean sea level (AMSL), and above ground level (AGL).

(2) *FAA Notification.* Every application for a new antenna structure or for an increase in antenna structure height shall state whether FAA notification is required. If notification is required, a copy of the FAA study shall be included; if it is not available, the applicant shall state the name filed under, the date of filing and the location of the FAA office.

20. § 22.15(d) is removed and reserved.

22.15 (e), (f) maintenance contracts, filing requirements.

Explanation

These sections refer to maintenance procedures and related filing requirements. These rules provide detailed listings of what maintenance procedures applicants must follow and require applicants to file copies of their maintenance contracts.

We believe these requirements are unnecessary and unduly burdensome. Applicants are fully capable of establishing adequate maintenance procedures without detailed guidance from the Commission. Similary, the requirement in § 22.15(f) to file copies of contracts is unnecessary. Questions concerning such contractual matters rarely if ever arise. If such a problem should occur in the future, the staff can contact the individual applicant or licensee rather than burden all applicants with such a filing requirement. The responsibilities concerning maintenance contracts are fully discussed in other rule sections (§§ 22.110 and 22.205). We therefore propose to delete §§ 22.15 (e) and (f).

21. § 22.15(e) is removed and reserved.

22. § 22.15(f) is removed and reserved.

§ 22.15(g) Developmental authorizations.

Explanation

We propose to delete this subsection, which does nothing other than cross-reference § 22.405, the rule which discusses developmental authorizations. The latter rule is already highlighted in the Table of Contents and in the proposed Topical Index. We therefore propose to delete § 22.15(g).

23. § 22.15(g) is removed and reserved.

§ 22.15(h) Rural Radio, maps.

Explanation

This paragraph requires that rural radio applications include topographic maps. Elsewhere in this notice, we propose to eliminate this requirement for all other mobile services. *See* § 22.15(j)(8). Similarly, we propose to delete § 22.15(h).

24. § 22.15(h) is removed and reserved.

§ 22.15(i)(1) transmitter information.

Explanation

The transmitter information requirements specified in this paragraph have been modified by our revisions of §§ 22.108, 22.109, and 22.110. It is unnecessary to state these requirements twice in Part 22, so we propose to delete § 22.15(i)(1).

25. § 22.15(i)(1) is removed and reserved.

Section 22.15(i)(2) Other pending applications.

Explanation

This subsection requires that certain information be furnished so that the staff, in processing an application, will be fully aware of other pending applications by the same (or any related) applicant. The rule section as presently worded requires an applicant to state only whether it has other applications currently pending in the same general area. In practice, we have found that this information gives an incomplete picture of the situation in an applicant's proposed service area. The staff also needs to know what other facilities in the same area are presently licensed to the applicant as well as any other applications in that area that the applicant may have filed *concurrently* with the application under consideration. We propose to add language to require that this information be provided. We also propose to substitute, in place of the "same general area" standard, a 25-mile standard. We believe the former standard is too indefinite. The 25-mile standard will make it clear which pending applications must be identified. The 25-mile standard corresponds to the average service area around a base station transmitter. We also believe it is important that the applicant indicate other applications pending in the same market and propose to include this requirement in the rule.

26. § 22.15(i)(2) is revised:

§ 22.15 [Amended]

* * * * *

(i) * * *

(2) All applications for new or additional facilities will identify any other pending or concurrently filed applications in this service for new or additional facilities within the same market or within 25 miles of the proposed station that applicant, or any principal thereof, may be a party to or have an interest in, either directly or indirectly. All applications shall also identify all existing facilities in the 25-mile area licenses to the applicant or in which the applicant has an ownership interest, regardless of call sign or licensee name.

§ 22.15(i)(3)(iii) Maintenance, airborne mobile units.

Explanation

This section requires that applicants for airborne mobile stations submit a showing that they have made arrangements for maintenance by first or second-class radio operators.

Elsewhere in this Notice of Proposed Rulemaking we have proposed to deregulate maintenance. *See* § 22.205. We have also proposed to delete detailed showings of proposed maintenance procedures, *see* § 22.15(e). We believe similar deregulation is in order for airborne mobile units. We therfore proposed to delete § 22.15(i)(3)(iii).

27. 47 CFR is amended by removing § 22.15(i)(3)(iii) and removing the presently reserved § 22.15(i)(3)(iv).

§ 22.15(j)(6) Antenna height.

Explanation

We propose to revise this section to provide for the correct cross-references.

28. § 22.15(i)(6) is revised:

§ 22.15 [Amended]

* * * * *

(i) * * *

(6) Antenna height above average terrain for each of the eight radials specified in § 22.115.

§ 22.15(j)(8) Topographic maps.

Explanation

We propose to eliminate the requirement that applicants submit topographic maps as part of the application. Instead, applicants will prepare and retain these maps as part of their business records. Applicants will be required to make these maps available to the staff upon request and also to make them available to members of the public at reasonable reproduction cost. We believe this proposal will substantially reduce the volume of paperwork currently processed and still permit the staff to examine topographic maps in those unusual situations where it is necessary. This rule revision is also reflected in our discussion of § 22.15.

We propose to clarify the rule by specifying that topographic maps should include lines of latitude and longitude, as well as a scale. On occasion, applicants have submitted maps which have been cropped in such a manner as to delete this information. The proposed rule revision (proposed paragraph 8(iii)) will avoid this problem.

29. § 22.15(j)(8) is revised:

§ 22.15(j)

* * * * *

(8) Topographic maps showing:

(i) Exact station location; and

(ii) Location of radials used in determining elevation of average terrain, and

(iii) Lines of latitude and longitude, and a scale.

Note.—These maps will *not* be filed with the application but instead shall be retained

as part of the applicant's records and shall be made available to the Commission's staff upon request. These maps shall also be promptly furnished to members of the public at reasonable reproduction costs.

§ 22.19 (Proposed) Waivers.

Explanation

We propose to add a new rule discussing waivers and related procedures. Section 22.20(c) of the existing rules discusses waivers briefly. We propose to expand this discussion to clarify what standards are employed in reviewing waiver requests.

In the past the Commission's policy on waivers has been influenced by the fact that portions of the rules were outdated or inapplicable. Consequently, waiver requests were common, and many were routinely granted. This "regulating-by-waiver" approach has proven to be inefficient, time-consuming, and an administrative burden on the public and the staff. The present rulemaking updates or eliminates the bulk of those rule sections which have been the subject of so many waiver requests. Examples are the various logging and operator requirements in Part 22. Elsewhere in this notice, we propose that applicants no longer be required to submit radial profile graphs and topographic maps as part of applications. Additionally, we make our filing procedures more flexible by eliminating certain filing requirements which have been unnecessarily burdensome. We request comment on additional rule sections which should be modified so as to eliminate the "waiver request-waiver grant" cycle.

As a result of the revisions proposed in this notice, the staff will apply a more restrictive approach to waivers. We propose the following general policy: All waiver requests must be fully supported, and applications which request a waiver must be accompanied by an alternate showing which complies with the rules. Where grants of requests for waiver of a specific rule become commonplace, the need for the rule is called into question and will be examined to the extent our resources allow.

All waiver requests must be fully supported, either by cross-reference or by a statement of supporting factors. An application with an unsupported waiver request will be dismissed as defective.[1] If the request is based on information already on file, the information may be cross-referenced. A conclusory statement that the applicant requests a waiver or "needs" a waiver will not be considered as a supporting showing. On the other hand, a good faith effort to support a waiver request, even if insufficient to justify a waiver, will not render an application defective. Instead, the waiver request will be reviewed when the application is reached for processing. If at that time the staff determines that a waiver is not warranted, the alternate showing (which complies with the rules) will be reviewed with an eye toward granting the application without waiver.

We shall now examine some typical waiver requests in order to explain more fully the proposed policy. Waiver requests fall in two general categories: (1) those related to information required in applications and (2) those related to post-licensing operation. A typical example of an information-related waiver request is one concerning a need showing; that is, an applicant requests that it be granted a frequency without demonstrating need or without submitting a § 22.516 traffic loading study. Under the proposed policy, an unsupported waiver request would result in dismissal of the application as defective. A waiver request which is supported will be fully considered. If the staff determines that a waiver of the rules is not warranted, the request will be denied and the alternate showing will then be reviewed for disposition of the application in accordance with the rules. If the information required by the rules has not been submitted and the waiver is not granted, the application will be returned as defective.

It may be argued that it makes no sense to require an applicant to submit a traffic loading study along with a waiver request to omit such a study. We reject this position, however. If an applicant can demonstrate unique circumstances why the Commission should not *consider* loading on existing facilities, this explanation should be submitted to justify the waiver request. This does not mean, however, that a loading study should not be prepared or submitted. In the event the staff determines that a waiver is not warranted, the staff should be able to promptly determine whether the application should be granted in accordance with the rules. In our view, it is very inefficient to permit applicants at this latter stage to begin assembling information which the rules require as part of the initial filing. Furthermore, this latter procedure leaves the door open for abuse of the application process by permitting applicants to block competition through hastily filing competing applications minus the preparatory studies which demonstrate need. Our goal in implementing the waiver policy is to expedite application processing, not to facilitate dilatory tactics. We therefore propose to require alternate showings with waiver requests.

A typical example of a waiver for post-licensing operation is a height-power waiver; that is, an applicant requests authority to operate at a height or power greater than the limits set forth in the rules. As we have stated elsewhere (*see* § 22.117), we generally do not grant height-power waivers because of the potential for interference created by such waivers. Instead, applicants are expected to design more efficient systems by means of directionalized antennas or additional transmitters. If a height-power waiver request is submitted, it must be supported by an exhibit showing the proposed service contours if the waiver is granted, as well as a full explanation of the technical and economic reasons why the height-power limits in the rules are not feasible. Additionally, the applicant must attach an alternate exhibit showing the service contours if a grant were to be made in accordance with the height-power limits in the rules. Otherwise, in cases where the staff determines that a waiver is not in the public interest and no alternate showing is attached, the application will be returned as defective.

The proposed rules discussed above are obviously designed so that in the future the public mobile services will be regulated by rules rather than by waiver. We attempt in this notice to eliminate outdated rules which have in the past necessitated many waiver requests. As a result of the proposed rules revisions, we anticipate taking a more restrictive approach toward waivers. We shall expect applicants to file in accordance with the rules (which will be more flexible and updated) and only in extraordinary circumstances to request waivers.

30. § 22.20 is amended:

§ 22.20 [Amended]

31. § 22.20(c) is removed and reserved.

32. A new rule § 22.19 is added to read as follows:

§ 22.19 Waiver of rules (new rule)

(a) *Grant of waiver.* Waivers of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient

[1] An applicant's right to comparative consideration where a waiver request is submitted is discussed in *Lehigh Valley Mobile Telephone Co.*, "Order Designating Applications for Hearing," CC Docket Nos. 82-151, 82-152, released March 24, 1982; and *Allen C. Moore*, 86 FCC 2d 787 (1981). The proposals in the instant notice do not alter the policies set forth in these two orders.

to justify a waiver, including the unique circumstances involved and the lack of a reasonable alternative. If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) *Denial of waiver, alternate showing required.* If a waiver is not granted, the application will be dismissed as defective unless the applicant provides an alternative proposal which complies with the Commission's rules (including any required showings).

§ 22.20(b)(2) Filing of fees.

Explanation

This section provides that an application will be considered defective if the submitted filing fee is insufficient. GTE has suggested that the reference to filing fees be deleted.

At the present time, the Commission has suspended the collection of filing fees. Applications in the Public Mobile Radio Service are not presently returned for defects related to filing fees. This practice does not, however, preclude Congress or the Commission from establishing a filing fee schedule in the future. In such an event, § 22.20(b)(2) would again be invoked. Since the Commission has not announced the permanent discontinuance of filing fee schedules, the best course to follow is to recognize in this notice that § 22.20(b)(2) is not presently enforced but may be returned to use in the future and therefore should not be deleted.

§ 22.20(b)(5) Site availability.

Explanation

We propose to eliminate the requirement set forth in §§ 22.20(b)(5), 22.15(a) that applicants demonstrate the availability of the proposed site of a new facility. In the past this requirement has resulted in significant administrative burdens which have produced few benefits to the public. The processing staff has issued numerous deficiency letters to applicants who have failed to include a demonstration of site availability. Processing of the application is delayed pending a response to the deficiency letter.

In the great majority of cases, the omission of the required showing was due only to an oversight on the part of the applicant and did not involve unavailability of the site or misrepresentation concerning this issue. Thus, the delays and administrative burdens described above do not, except in rare cases, serve to identify substantive defects related to site availability. It is rare that some acceptable site is not available because PMS antennas can be mounted virtually anywhere.

We do not imply that applicants are no longer required to have an available site for their proposed facilities. In specifying the proposed site's location on the application, the applicant implicity represents that he has obtained at least reasonable assurances that the site is available for the proposed use. (See proposed § 22.15(a)). If a party demonstrates that, contrary to the representations made by the applicant, a substantial question exists as to whether the specified site is in fact available, we shall carefully examine the facts before issuing a construction permit.

33. § 22.15(a) is revised:

§ 22.15 [Amended]

(a) Applications for fixed stations shall list the proposed antenna site. The applicant shall have obtained reasonable assurances that it can use the site.

34. § 22.20(b)(5) is revised:

§ 22.20 [Amended]

35. § 22.20(b)(5) is removed and reserved.

§ 22.20(b)(7) Site availability.

Explanation

This paragraph should be deleted for the reasons stated in the discussion of § 22.20(b)(5). Both paragraphs require a showing of site availability. We propose to delete both.

36. § 22.20(b)(7) is revised:

§ 22.20 [Amended]

37. § 22.20(b)(7) is removed and reserved.

Major amendments and the cut-off rule (§§ 22.23, 22.27, and 22.31).

Explanation

These rules have been the subject of extensive litigation, many pleadings, and great administrative burdens to applicants and to the staff. Without question, the lengthy deliberations precipitated by these rules have delayed rather than expedited processing of applications and service to the public. We question whether these delays are justified by any countervailing public benefit or procedural safeguard.

The cut-off rule (§ 22.31) provides that an application for a particular frequency will be entitled to comparative consideration with an earlier-filed application for the same frequency only if the later application is filed within sixty days of public notice that the first appplication was filed. This rule was adopted to avoid an endless series of mutually exclusive ("MX") applications, wherein the staff processes all MX applications currently on file but is obligated to re-process all such applications because, just before staff action on the applications, one more applicant requests the same frequency. A cut-off rule was necessary in the interests of finality and of expeditiously providing service to the public.

The major amendment rule (§ 22.23) has two purposes. The first is to require that amendments which are considered "major" in scope (as listed in the rule) will apear on public notice. This policy enables members of the public to protest the proposed amendment or bring public interest considerations to the Commission's attention. Public notice is not required for minor amendments, since, even with the proposed modifications, the proposed facilities remain substantially unchanged from those described in the applicant's earlier proposal, which was already placed on public notice.

The second purpose of the major amendment rule relates to the cutoff rule: when an applicant files a major amendment, the proposed change is by definition so major that the earlier application is no longer considered to be "before" the staff for consideration. Instead, the Mobile Services Division processes and takes action on the modified proposal. Accordingly, the filing date for the application is deemed to be the date on which the major amendment was filed. This date is crucial because of the cut-off rule, as discussed above.

The complicated cases, which involve delays, are those where the applicant files a second application. The applicant's previously filed application is MX with a competitor. Although the second application is not formally characterized as an amendment to the previously filed application, both applications propose service in the same market (*e.g.*, the second application requests an additional frequency.). Although the rule (§ 22.23) refers only to "amendments," the staff has in the past considered certain later-filed applications to also qualify as major amendments, thereby invoking the cut-off rule. The difficulty has been in deciding where to draw the line on the cut-off issue, and the debate has revolved around whether the later-filed application should be construed as a major amendment or as a later-filed application which is unrelated to the earlier application.

Section 22.23(c) defines major amendments, but also states that amendments will be classified "on a

case by case basis." It thus confers some discretion in this area. "Later-filed applications" are not explicitly referred to in this rule; instead the only term used is "amendments." The staff, however, has in the past viewed certain types of later-filed applications as major amendments to an earlier application. The discussion has turned on such factors as whether the earlier and later applications were filed years apart, whether the proposed transmitting facilities are co-located on the same rooftop, whether the proposed service areas are similar in magnitude, whether the later-filed application was filed to contest a competitor's renewal application for the same frequency and whether an applicant might otherwise be deterred from filing any application to significantly improve its existing facilities. *CF., Radio Dispatch Corp. et. al.*, 52 FCC 2d 750 (Rev. Bd., 1975); *Baker Protective Services, Inc.*, 78 FCC 2d 373 (1980), consolidation granted, 84 F.C.C. 2d 432 (1981).

In many cases, the decision as to whether to dismiss an earlier-filed application pursuant to the cut-off rule has been based not upon an objective analysis of the cut-off rule's purposes, but instead upon abstract discussions of the definition of a major amendment and upon efforts to avoid inequitable results no matter what the term "major amendment" actually means. After careful consideration, we believe that applications will be processed more expeditiously and the public better served by focusing instead on two factors: (a) the cut-off rule and (b) how to expedite the processing of MX applications. Under this approach, an earlier-filed application would not be dismissed. Instead, the application would proceed toward an "MX" hearing. The later-filed application would be judged on its own merits. Since it is not related to the mutual exclusivity of the two competing applications, no reprocessing of the "MX" package is triggered, and hence there is no reason to dismiss the applicant's earlier application. Nor would the staff consolidate the applicant's two proposals, since the more expeditious approach is to process each separately, thus insulating each application from delays related to processing the other. We belive this approach will avoid delays which have traditionally been associated with the concept of major amendments without undermining the rationale of the cut-off rule.

We do not propose to apply this procedure to applications filed for the stated purpose of amending the earlier application. An obvious example is an amendment filed to change frequencies and thereby avoid an MX situation. Of course, an applicant may also request dismissal of its MX application.

We further propose, in the interest of expediting MX situations, that no major amendments of an MX application be permitted except to withdraw from an MX situation; *i.e.*, we propose to permit only amendments which resolve frequency conflicts and will eliminate an MX situation. This policy would apply regardless of whether the 60-day cut-off period had passed. We believe that parties will still have sufficient flexibility to improve their current service to the public, since as stated above they may still file other applications which will be judged separately from the MX application.

We also propose, as a means of avoiding delays where MX situations arise, that MX applicants be required to file separately for other non-MX frequencies, *i.e.*, we propose to require that, if applicant "A" files a Form 401 requesting a frequency already requested by applicant "B", then "A" may not also request, as part of the same application, other frequencies which are not MX with applicant "B's" proposal. Instead, "A" may request the other frequencies on a separate Form 401, which will be processed separately from the MX package.

38. § 22.23 is revised by adding a new paragraph (d):

§ 22.23 Amendment of applications.

* * * * *

(d) *Mutually exclusive applications.* No major amendment may be filed to an application which is electrically mutually exclusive with another application except to resolve the frequency conflict. This policy applies regardless of whether the 60-day cutoff period has passed.

* * * * *

39. § 22.3(e) is revised by adding a new paragraph (e):

§ 22.31 [Amended]

* * * * *

(e) *Additional frequencies.* An applicant requesting a frequency which is mutually exclusive with another application shall not in the same application request additional frequencies which are not mutually exclusive with the first application. Instead, additional frequencies may be applied for in a separate application.

§ 22.23(a) Amendment of application as a matter of right.

Explanation

This rule currently provides that applicants may amend an application as a matter of right at any point prior to designation. This policy has created uncertainty and inefficiencies in the processing of applications. In many cases, staff members have expended time processing applications only to have them amended in such a manner that processing must be repeated from the beginning. We therefore propose to permit amendments only within 90 days from the application filing date. Beyond that point an applicant must withdraw the pending application and file and the "amended" application anew. We further propose, in the interest of expediting the processing of applications, that once a petition to deny has been filed against an application, no amendment to that application will be permitted unless the amendment is filed to meet all the objections of the petitioner(s), such that any petition(s) may be dismissed. We believe that this policy will have several effects: (a) It will decrease the number of amendments filed and thereby expedite processing; (b) it will encourage settlements between parties; and (c) in cases where settlement is not possible, applications will proceed more promptly to disposition.

40. § 22.23(a) is revised:

§ 22.23 Amendment of applications.

(a) *Amendments as of right.*

A pending application may be amended as a matter of right within 90 days from the original filing date of the application, provided that:

(1) Amendments shall comply with § 22.29, as applicable; and

(2) No amendment to an application will be permitted after a petition to deny has been filed unless the amendment responds to all objections raised in all petitions such that any petitions may be dismissed.

§ 22.23(c) Major amendments.

Explanation

We propose to take a more restrictive approach in classifying amendments to applications. This rule currently provides that amendments will be classified on a case-by-case basis and then lists categories of major amendments. We propose to delete some of these categories and to re-word this section so that all amendments will be considered minor (and thus not subject to public notice requirements) except for the few categories listed. We

believe these revisions will give greater clarity to the rule and will streamline processing of applications by reducing the number of applications which unnecessarily appear on public notice. For these applications, the revisions will also eliminate delays (a minimum of 30 days) associated with public notice procedures.

We also propose that changes in the type of emission no longer be considered major. *See* present § 22.23(c)(iii). This revision is consistent with other proposed revisions (*See* § 22.106) in this notice to make the rules more flexible concerning emissions.

We propose a simpler and more flexible standard for the amendments presently listed in subsection (c)(3)(iv). This rule lists various types of base station amendments which will be considered major. The rule discusses various criteria: 10% increase along each radial, change in coordinates of more than five seconds of latitude or longitude, enlargement of service area. We propose to adopt a single standard and to eliminate other language currently found in the rule. The proposed standard is increases in reliable service area of more than ten (10) percent or 1 mile in any direction (as measured along eight radials).

We propose to delete present § 22.23(c)(5), which states that "substantial and material alterations in the proposed service" will be considered major amendments. This language is vague and overlaps the categories which are already described in detail in proposed paragraph (c)(2).

We propose to revise § 22.23(c)(6), concerning changes in ownership, so that it is more readable. The present rule makes complicated references to § 310(d) of the Communications Act. We propose to revise this rule so that the reader can, without referring elsewhere, determine whether an amendment is major or minor. We will also indicate, as stated in § 309(c)(2)(B) of the Communications Act, that amendments concerning involuntary assignments and transfers are minor amendments. *See* proposed paragraph (c)(4).

We propose to add language (in the first paragraph of proposed § 22.23(c)) requiring that amendments to applications be accompanied by an exhibit showing both the original service contour and the proposed service contour. Such an exhibit is necessary to enable the staff to classify the modification as major or minor.

We also propose to add a subsection (c)(3), concerning amendments to cellular applications.

We propose to delete subsection (c)(7), which is unnecessary. It simply cross-references § 309 of the Communications Act, which establishes general public notice requirements for applications and amendments. Section 309 does not create more categories or provide additional information not already provided in § 22.23(c), so we propose to delete subsection (7).

41. § 22.23(c) is revised:

§ 22.23 [Amended]

* * * * *

(c) * * *

(1) The Commission will classify all amendments as minor except in the cases listed below. Amendments to applications shall be accompanied by an exhibit showing both the original service contour and the proposed service contour.

(2) An amendment shall be deened to be a major amendment subject to § 22.27 and § 22.31 under any of the following circumstances:

(i) *Change in technical proposal.* If the amendment results in a substantial change in the engineering proposal such as (but not necessarily limited to):

(A) A change in, or an addition of, a radio frequency; or

(B) A change in the class of Station (*e.g.*, from control to base).

(ii) *Amendments to proposed base station facilities.* If the amendment enlarges the reliable service area of the proposed base station facilities by more than ten (10) percent or by more than one (1) mile along any of eight radials spaced every forty-five (45) degrees from zero degree True North; or

(iii) If in the Domestic Public Cellular Radio Telecommunications Service, the amendment results in any change in the Cellular Geographic Service Area.

(iv) *Changes in ownership or control.* It the amendment specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant. *Provided, however,* such a change would not be considered major if it is involuntary or if the amendment merely reflects a change in ownership or control that has previously been approved by the Commission.

§22.27(a)(3) Informational public notices.

Explanation

We propose to revise § 22.27(a)(3), concerning informational public notices. On occasion the staff issues notices not required by either § 22.27(a) of the Rules or § 309(b) of the Communications Act. Instead, these notices are issued solely for informational purposes. In the past, confusion has arisen in certain cases where members of the public have erroneously believed that, because such an informational public notice was released, the Commission was required to wait 30 days before acting on the published matter and parties were entitled to file protests concerning the informational notice. We propose to revise § 22.27(a)(3) by adding language stating that public notices which are released for informational purposes only do not create protest rights by appearing on public notice.

42. 47 CFR 22.27 is amended by revising § 22.27(a)(3) to read as follows:

§ 22.27 Public notice period.

(a) * * *

(3) Information which the Commission in its discretion believes of public significance. Such notices are solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

Explanation

This rule establishes standards by which the Commission reviews settlement agreements among parties where one or more applications are contested. In requiring prior approval of such agreements, the Commission's concerns have been the following:

(1) to discourage financial incentives for strike applications;

(2) to discourage unreasonable buy-outs of competitors; and

(3) to discourage attempts to delay grants or unreasonably profit from the adminstrative process. *See* Domestic Public Land Mobile Radio Service, *Report and Order*, 60 FCC 2d 549, 558–59 (1976).

We question the continuing relevance of these regulatory concerns. With the availability of 35 MHz and 900 MHz frequencies as well as cellular communication, the shortage of mobile service frequencies which underlay the prior approval policy is not now the critical consideration it has been in the past. Additionally, the mobile services market has demonstrated itself to be extremely competitive and thus unlikely to create incentives for the type of behavior mentioned above. Finally, we have adequate tools to deal with abuse of the regulatory process, should it occur.

We therefore propose to eliminate the prior approval requirement. Instead, we shall simply require that licensees and applicants notify the Commission of any relevant settlement agreements at the time that they make ownership changes, dismiss pleadings, or amend or dismiss applications.

43. § 22.29 is revised:

§ 22.29 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) *Applicability.* This section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreeement or understanding. This section applies only when the agreement or understanding will result in (1) a major change in the ownership of an applicant to which §§22.23 and 22.31(e) apply, or (2) the individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading. It does not apply to any engineering agreement or understanding which resolves frequency conflicts without creating new or increased frequency conflicts. Nor does it apply to agreements which do not involve any consideration promised or received.

(b) *Policy.* Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties which, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications, shall at the time of filing notify the Commission that such filing is the result of an agrement or understanding.

§§ 22.30 (b) and (c) Informal objections.

Explanation

Part 22 currently has rules which explain how informal objections are to be filed, when they must be filed in order to be considered, and the manner in which they will be disposed of by the Commission. After careful consideration, we believe these rules provisions do not serve a useful function, and we propose to eliminate them. The rules for filing petitions to deny and other formal objections will remain in effect.[2]

As the rules are currently worded, many applications which would otherwise be granted routinely and quickly are delayed by informal objections. Parties are encouraged to file informal objections simply because it is easy and inexpensive to do so. The staff spends approximately the same amount of time resolving informal objections as they spend on formal objections. The consideration given to these objections is often not materially different from the consideration given to formal objections. Consequently, a different filing requirement seems to us unwarranted. We believe that if there is an objection or comment worth making, it is not an unreasonable burden to require that the objection be presented with the formality required by Part 1 of the Rules. The proposed revision will conform Part 22 with the approach taken in Part 1 and will promote more efficient disposition of applications. We therefore propose to delete § 22.30 (b) and (c).

§ 22.30 [Amended]

44. §§22.30 (b) and (c) are removed and reserved.

§ 22.30 Petition to deny major amendment.

Explanation

The rules currently permit petitions to deny to be filed against a major amendment to a previously filed application. Since the amendment is major, it appears on public notice and may be protested within the 30-day public notice period. As the rules presently read, the petition may raise any public interest considerations, even if they are unrelated to the nature of the amendment and even if the petitioner did not raise these matters when the original application was filed. In the interest of expediting the processing of applications, we propose to add language to this rule stating that petitions to deny a major amendment may only raise matters directly related to the amendment and not to the underlying application, which has already appeared on public notice. Since an interested party had an adequate opportunity to comment on the information contained in the underlying application, due process will be preserved in this change to our rules.

45. § 22.30(d) is revised:

§ 22.30 [Amended]

* * * * *

(d) Petition to deny major amendment. A petition to deny a major amendment to a previously filed application may only raise matters directly related to the amendment and which could not have been raised in connection with the underlying, previously filed application.

§ 22.31(c) Mutually exclusive applications.

Explanation

Paragraph 22.31(c) now provides that when applications A, B, and C are filed, in that order, C must be filed within the "cutoff" period begun with A. This is so even if C is not mutually exclusive with A but only with B.

It was generally agreed that this rule could result in unfairness to C since he would have to file an application within a short period of time between the date B files and the end of the cutoff period from A, which could be as little as one day.

The Mobile Services Advisory Committee discussed § 22.31(c). The committee did not recommend that we delete this paragraph since it prevents a never-ending chain of applications, which delays the administrative process.

The Commission does not propose to amend the rule since there was no specific suggestion which would eliminate the unfairness and also preventing the never-ending chain. We point out, however, that if applicants A and B were to file their applications for the purpose of "cutting off" applicant C, this matter should be brought to the attention of the Commission as an abuse of process or misrepresentation.

We therefore propose no change in § 22.31(c), but request suggestions which might rectify the problem described above.

§ 22.31(e) Exceptions to major amendment classification.

Explanation

We propose to relocate this subsection. It presently appears as part of the rule pretaining to mutually exclusive applications, though it discusses major amendments rather than mutually exclusive applications. We therefore propose to place this subsection under § 22.23 ("Amendment of applications") where it logically belongs.

We also propose to revise this rule to delete the language "authorized stations" from present § 22.31(e)(2). This language is in error. If an application were filed which created a frequency conflict with an existing station, the application would be dismissed as defective. If, prior to dismissal by the staff, such an applicant determines that a frequency conflict exists and files an amendment to resolve the conflict, the amendment will be classified, not by existing § 22.31(e)(2), but rather under the standards set forth in § 22.23.

Present paragraph § 22.31(e)(6)(iii), dealing with the change of equipment has not been retained in the proposed rule since we propose to permit licensees to replace equipment without specific authorization from the Commission. (See § 22.121, Replacement of Equipment).

[2] Rule section 1.41 ("Informal requests for Commission action.") is unaffected by this proposal, which eliminates only the discussion of informal pleadings under Part 22.

We also propose to add a subsection stating that an application will not be considered as newly filed where an amendment proposes only to change a control or repeater frequency. We do not believe an applicant should lose its cut-off status simply because the applicant proposes to change a control or repeater frequency. Changes in control and repeater frequencies are not so substantial a change in the original application that the application should be considered as newly filed.

46§ 22.31(e) is redesignated § 22.23(h), and revised to read as follows:

§ 22.23 [Amended]

* * * * *

(h) *Exceptions to major amendment classifications.* An application will be considered to be a newly filed application if it is amended by a major amendment (as defined in this rule section), except in the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 22.35), and the Commission or the presiding officer accepts the amendment pursuant to § 22.23(b);

(2) The amendment resolves frequency conflicts with other pending applications but does not create new or increased frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 22.29 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(7) The amendment proposes only a change in a control or repeater frequency.

§ 22.39 Transfer of control or assignment of station authorizations.

Explanation

We propose to revise this section so that it is in a more readable format and so that relevant language is not scattered throughout several sections in Part 22. Additionally, we propose to insert a discussion of forms involved in assignments and transfers. These "forms" sections currently appear in Sections 22.11(d), (e), and (f), which we propose to delete. We believe this format will be more functional and more helpful to members of the public who seek information about assignments, transfers, and the associated forms.

Section 22.3(d) of the existing rules sets forth the basic requirement that assignments and transfers may be carried out only after obtaining Commission approval. We believe this requirement should more logically be included as part of § 22.39 and propose to make this revision.

Present § 22.39(d) requires double reporting in the case of death or legal disability of a licensee. First, the Commission must be notified promptly of the death, and second, an application for assignment or transfer must be filed within 30 days. We propose to eliminate the requirement of prompt notification and retain only the 30 day application filing rule.

This double reporting is unnecessary. The death of the licensee does not ordinarily affect the operation of the station. Even if it does, a separate rule concerning discontinuance of service applies. It may well require most of the thirty days before the interested parties finish more pressing transitional matters, including keeping the business in operation. We therefore feel that our repeal of the immediate notification requirement removes an unnecessary government burden on licensees without sacrificing any necessary information from the same parties.

We also propose to delete the trafficking rule presently found in Part 22. The purpose of the trafficking rule was to prevent "professional applicants" from getting licenses after a comparative hearing and then selling the construction permits or licenses to minimally qualified persons who would not have been granted the construction permits in a comparative hearing. Such a situation would subvert the public interest findings of the comparative hearing.

We recognize that there are many cases when it is financially advantageous to sell a station even though the station, or part of its facilities has been owned or operated for less than 2 years. It is a reality of the marketplace that the value of a station appreciates rapidly and substantially in many cases. Owners and prospective owners of stations are well aware of this reality. We propose to recognize this reality and to eliminate the prohibition against taking advantage of these economic opportunities. It is simply not realistic for the Commission to take the position that the only valid reason for resale of a station in less than two years is for some factor such as ill health of the station owner or plans of imminent retirement. Such an unrealistic policy may force station owners into distorting their true reasons for selling. We believe that in the majority of cases, a station owner sells the station because it is in the owner's economic interest to do so. If the proposed buyer is qualified to be a licensee, the proposed sale is in the public interest and should be approved by the Commission. The present trafficking rule appears to take a jaundiced view of such considerations, and we therefore propose to eliminate this rule.

We do not imply, in eliminating the trafficking rule, that the Commission is unconcerned with whether the public receives service. The Communications Act implicitly requires that authorization may not be granted *solely* for private gain but for the "public interest, convenience, and necessity." (§ 309(a), 47 U.S.C. § 309(a)). We believe that every applicant who requests a frequency implicitly represents that his primary purpose is to become a carrier and to promptly construct and operate the station. If such is not the case, the applicant has made misrepresentations to this Commission. We believe that the proper regulatory response is to examine the misrepresentation issue, which is covered in proposed new section 22.309, rather than to perpetuate the artificial constraint against trafficking. Our proposal here applies only to common carrier authorizations in the mobile services; it should not be taken as a general expression of our view of trafficking rules governing other common carrier and broadcast licenses.

Finally, we propose to consolidate Forms 702 (assignments) and 704 (transfers) into one simplified form. We attach a proposed consolidated form and request comments on text, format,

and procedural aspects related to the combined form.

§ 22.11 [Amended]

47. §§ 22.11 (d), (e) and (f) are removed and reserved.

§ 22.3 [Amended]

48. § 22.3(d) is removed.

§ 22.40 [Removed and Reserved]

49. § 22.40 is removed and reserved.

50. § 22.39 is revised:

§ 22.39 Transfer of control or assignment of station authorization.

(a) *Approval required.* Authorizations shall be transferred, assigned, or disposed of in any manner, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy, or legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission.

(b) *Forms required.*

(1) *Assignment.*

(i) FCC Form 705 shall be filed to voluntarily or involuntarily assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 705 shall be filed within 30 days of the event causing the assignment.

2. *Transfer of Control.*

(i) FCC Form 705 shall be submitted in order to voluntarily or involuntarily transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 705 shall be filed within 30 days of the event causing the transfer.

(3) *Form 430.* Whenever an application must be filed under paragraphs (b) (1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio Licensee Qualification Report") unless an accurate report is on file with the Commission.

(4) *Notification of completion.* The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) *Partial assignment.* Request for authorization for partial assignment of a permit or a license shall be made:

(i) by the assignee: on FCC Form 408 if the assigned facilities are to be incorporated into an existing licensed station; on FCC Forms 401 and 408 if a new station is to be established; and

(ii) by the assignor: on FCC Form 408. The partial assignment must be completed within 60 days. If the assignment is not timely completed, FCC Form 408 must be filed to return the license to its original specifications.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience, and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

§ 22.43 Term of construction permit.

Explanation

This section has been retitled. The proposed rule cites to the required form. The proposed rule also makes it clear that a request for extension of time to construct will be granted only when the failure to complete construction is due to causes beyond the applicant's control. This is the current policy of the Commission. Public Notice, "Applications for Extension of Time to Complete Construction." FCC Mimeo 895 (Mobile Services Division, May 12, 1981); *see also* present § 22.44(a).

The present rule provides that a radio station must commence operation within 8 months of the grant of the construction permit. We received comments stating that this period is not realistic and should be extended to 12 months. We proposed to follow this suggestion.

We propose to add language stating our policy not to grant extensions based on lack of financing. This has been our policy since the Commission eliminated the requirement that applicants demonstrate their financial qualifications to construct and operate the proposed facilities (but *see* our discussion of § 22.405, concerning cellular and developmental authorizations). The substance of this section was explained to the Mobile Services Advisory Committee. The members thought that a Commission rule denying extensions for lack of financing to be a reasonable exchange for the deleting of the financial qualification requirement. This proposed revision will update the rule accordingly.

We propose a rule that states we shall not extend construction permits for lack of site availability. We believe that only in unusual cases will lack of a site be beyond the permittee's control. As we have stated elsewhere in this notice, we proposed to deregulate by eliminating the site availability requirement. We believe that in the great majority of cases, applicants can and do manage this portion of their business operations without regulatory intervention. We have therefore proposed to permit applicants to assume this responsibility without reporting to the Commission. At the same time, permittees should be able to make arrangements for obtaining a site without prolonging the construction period. In our view this is the logical extension of eliminating the site availability requirement.

The proposed rule states the Commission's policy concerning extensions necessitated by delays in obtaining state certification. Various aspects of this policy have been stated in *Mobilfone Service, Inc.*, Mimeo 07273 (released February 23, 1981), *modified*, Mimeo 001134 (Com. Car. Bur., released May 26, 1981); and *Hazle-Tone Communications, Inc., supra.* The proposed rule codifies the principles set forth in these orders by stating that either one or two 8-month extensions will be granted, depending upon applicable state law, but no extensions will be granted in cases where state certification has been denied and all state appeals have been exhausted.

The Committee concluded that the extension for state certification policy should be codified in the rules. The Committee did not necessarily agree with the policy, but believed it was inappropriate to change the policy in this proceeding.

51. § 22.43 is revised:

§ 22.43 Term of Construction Permit.

(a) *General Rule.* (1). A construction permit shall specify the date of grant as the earliest date for commencement of construction.

(2) The station must be completed and ready for operation, as shown by commencement of service tests (§ 22.212), within 12 months after the grant of the construction permit. In the case of offshore telephone stations, the period shall be 18 months.

(b) *Extension of Construction Permit.*

(1) *General rule.* (i) Application for extension of construction permit may be made on FCC Form 701 ("Application for Additional Time To Construct Radio Station").

(ii) Extensions will be granted only if the applicant shows that the failure to complete is due to causes beyond his control. No extensions will be granted for delays caused by lack of financing, lack of site availability, or for the transfer of an authorization.

(2) *State certification.* No extension will be granted when state certification has been denied and all state appeals have been exhausted. If an applicant requests an extension due to lack of state certification, one 8–month extension may be granted when state law permits construction before certification is obtained. No more than two 8–month extensions may be granted when state laws prohibit construction before certification is obtained. Lack of

state certification must be due to a cause beyond applicant's control, and extensions will not be granted if there is lack of diligence in pursuing state certification.

(c) *Cellular base stations.* Cellular base stations, which will provide coverage over 75% of the cellular geographic area, as defined in § 22.905 of these rules, shall be completed and the station ready for operation within 36 months from the original date of the construction permit.

§ 22.44 Forfeiture and termination of station authorization.

Explanation

We propose to revise this section to make it more readable, more logically organized, and more accurate.

We propose to change the heading to "Termination of authorization," which describes the rule more accurately.

We will also add language to codify the policy set forth in *Hazle-Tone Communications, Inc.* (FCC Mimeo 6645 (Com. Car. Bur., released February 10 1981), *recon. pending.*)), that a construction permit will be forfeited where the permittee is denied state certification and the state appeal process has been exhausted.

Sections (a) and (b) of the present rule discuss construction permits (CPs) and licenses separately, but the two sections are for the most part the same, and they are wordy. We propose to combine and condense them into a new subsection (a). We propose to relocate the discussion of FCC Form 701 (for an extension of CP) to § 22.43 ("Term of construction permit"), where it more logically belongs.

We propose to add a new subsection (b) by relocating the present § 22.45(c) concerning termination of CP upon termination of a related license. We believe this section more logically belongs in § 22.44. We shall also rewrite this paragraph in plain language.

We propose to re-write subsection (c) in plain language. It provides that a special temporary authorization will terminate automatically if the carrier fails to comply with the terms of the STA.

51. § 22.44 is revised:

§ 22.44 Termination of authorization.

(a)(1) All licenses, construction permits, and other authorizations shall terminate on the date specified on the authorization or on the date specified by these rules unless an application for renewal or reinstatement is timely filed.

(2) If no application for renewal or reinstatement has been made before the authorization's expiration date, a late application for renewal or reinstatement will be considered only if it is filed within 30 days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control Service to subscribers need not be suspended while a late filed renewal application is pending, but such service shall be without prejudice to the Commission action on the renewal application and any related sanctions.

(b) When any station license expires or terminates, any related construction permit which is then in effect shall automatically terminate at the same time unless the Commission has specified otherwise.

(c) *Special Temporary Authority.* A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

(d) *State certification.* Where the holder of a construction permit is denied state certification and the state appeal process is exhausted before the permit has expired, the permit will not be extended and will be forfeited as of its expiration date. If such a permittee regains state certification before the permit has expired, an extension request may be considered.

§ 22.45 License period.

Explanation

This section has been rewritten, and definitions have been revised to conform with the new definitions proposed in § 22.2.

We propose to redesignate Paragraph (c) to § 22.44 since it discusses expiration and termination and more logically belongs with § 22.44.

The *Provided* clause of old paragraph (a) will be deleted, because land mobile units are not licensed.

53. § 22.45 is revised:

§ 22.45 License period.

(a) (1) Licenses will be granted for 5 years. When a date is specified in paragraph (b) of this section, the license will be valid until that date in the fifth year of the license. Developmental licenses shall be granted for one year.

(2) When the Commission determines the public interest, convenience or necessity would be served by a shorter license period, the license will be granted for such period.

(b) *License Termination.* Station licenses will expire on the dates listed below, on the last year of the license:

(1) Public Land Mobile (radio common carriers) April 1.

(2) Public Land Mobile (wireline common carriers) July 1.

(3) Offshore Telephone August 1.

(4) Public Land Mobile (air-ground base stations) September 1.

(5) Rural Radio November 1.

§ 22.100 Frequencies, Interference (new).

Explanation

This rule is presently entitled "Frequencies," although it also discusses related interference questions. We propose to include both topics in the title of § 22.100 and to add a new subsection (b) which more clearly states the existing policy concerning interference matters. We also propose to codify several interference policies as discussed below. Finally, we propose other revisions about frequencies as indicated below.

It has been our policy not to act on complaints of interference except when our rules so provide. The proposed "general rule" sets forth this policy. It also states that we do not act on interference complaints unless they address serious interference problems. This policy is in fact the definition of "harmful" interference.

The third paragraph of proposed § 22.100(b) restates part of present § 22.100(a) and states that the Commission will take whatever action it deems necessary to prevent harmful interference. In some cases this could be no action; in others it could mean changes in frequency, power or emissions or a time-sharing arrangement.

Proposed paragraph (b)(2) is entitled "Operation in accordance with authorization or rules." This section encompasses the substance of existing § 22.211, "Suspension of transmission." We therefore propose to delete § 22.211.

Proposed paragraph (b)(3) explains "secondary use," in the context of harmful interference.

Proposed paragraph (b)(4) codifies Commission policy with respect to base-to-base interference. Existing station operators must raise interference issues in the application process. If the application is granted, then the station operators must work out interference problems between themselves.

Proposed paragraph (b)(5) codifies our policy with respect to mobile-to-base and mobile-to-mobile interference. The Mobile Services Advisory Committee requested that the Commission take action to prevent mobile stations from causing interference to other base stations. Our policy, however, has been not to act upon this type of interference complaint. This interference is a result of "shoe-horning-in" stations; that is, authorizing base stations to operate

with as little mileage separation as is technically feasible. This policy has been followed in response to heavy demand within the industry for additional authorizations. Mobile-to-base station interference has in some cases resulted. There are, however, technical measures which licensees can employ to eliminate such interference. They may, for example, reduce the base station receiver sensitivity or equip the system for tone-coded signals. We therefore propose no protection for this type of interference, since such protection would reduce the availability of frequencies.

Paragraphs (b)(6) and (b)(7) restate the portions of §§ 22.518 and 22.519, respectively, which deal with interference.

Proposed paragraph (c) restates present § 22.100(b) and refers to the additional rules enacted to protect against interference. See § 22.501(a), Common Carrier Docket 80–189, released July 15, 1981, 46 FR 38509 (July 26, 1981), corrected, 46 FR 44758 (Sept. 8, 1981).

Section 22.100(d) is unchanged and remains in the rule section as presently worded, with two exceptions. In the first paragraph, the second sentence (concerning the fixed-satellite service) is deleted. This sentence does not apply to Part 22. We also propose to cross-reference § 22.501(e), which states certain interference conditions applicable to these frequencies.

Paragraph (e) covers the 72–76 MHz band and merely directs the reader to the various interference matters which are discussed in § 22.103. We do not consider it necessary or helpful to repeat the same matters in § 22.100.

Paragraph (f) relocates present §§ 22.501 (i) and (j). These rule sections discuss interference conditions related to control and repeater stations.

Paragraph (g) consolidates present § 22.501(g)(1) and § 22.601(b)(1). The second sentence restates §§ 22.501(g)(2) and 22.601(b)(2). The last sentence consists of present § 22.601(f)(4).

Paragraph (h) serves merely to alert the reader that quiet zones do exist, that there are interference considerations in such zones, and that § 22.113 is the specific reference.

54. § 22.100 is revised:

§ 22.100 Frequencies, Interference.

(a) The frequencies available for use in the services covered by this part of the rules are listed in the applicable subparts of this part. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in these services will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in these services shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most efficient use of the authorized facilities.

(b) *Interference.*

(1) *General rule.* (i) The Commission will take no action upon complaints of interference against any station which is operating within the Commission's Rules and its authorization, except as provided in this section.

(ii) The Commission will only consider complaints of interference which significantly interrupt or degrade a radio service.

(iii) In cases where this section protects against interference, the Commission will take whatever action it deems necessary in response to interference complaints.

(2) *Operation in accordance with authorization or rules.* A station causing interference by failing to operate in accordance with its authorization or these rules shall discontinue radiation until it can comply with the authorization or rule regardless of the amount of interference caused, except for transmission concerning the immediate safety of life or property, in which case transmission shall be suspended immediately after the emergency is terminated.

(3) *Secondary uses of frequencies.* All uses of frequencies specified in these rules as secondary to the primary uses shall be discontinued if harmful interference to the primary use cannot be eliminated.

(4) *Base-to-base station interference.* When an authorization has been properly granted, interference between base stations in the public mobile radio service shall be resolved by the licensees. If the licensees cannot resolve the interference, the Commission may order time sharing, or, after notice and opportunity for hearing, may order whatever changes in equipment or operation it deems necessary.

(5) *Mobile-to-base, mobile-to-mobile.* No protection will be provided against mobile-to-base or mobile-to-mobile interference.

(6) *Control stations.* Control stations shall not cause harmful interference to other stations.

(7) *Dispatch stations.* Dispatch stations shall not cause harmful interference to other stations.

(c) *35 MHz band.* No protection against tropospheric and ionospheric propagation of signals will be given except as provided in § 22.501(a).

(d) *2100 MHz bands.* All applicants for regular authorization for use of the bands 2110–2130 MHz and 2160–2180 MHz shall, before filing an application or major amendment to a pending application, coordinate proposed frequency usage with existing users in the area and other applicants with previously filed applications, in this radio service and in the point-to-point Microwave and Local Television Radio Services, whose facilities could affect or be affected by the new proposal in terms of frequency interference or restricted ultimate system capacity. Use of frequencies in these bands is subject to the interference conditions in § 22.501(e). In engineering a system or modification thereto, the applicant shall by appropriate studies and analyses select sites, transmitters, antennas and frequencies that will avoid harmful interference to other users. All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems that are likely to need additional capacity in the foreseeable future. The applicant shall identify in the application all entities with which the technical proposal was coordinated in the event that technical problems are not resolved or if the existing licensee, permittee or applicant does not respond to coordination efforts within 30 days after notification, an explanation shall be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of harmful interference (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof shall be contained in the application. The following guidelines are applicable to the coordination procedure:

(1) Coordination involves two separate elements: Notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The name of the

carriers with which coordination was accomplished must be specified.

(2) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added or changed.
Transmitting equipment type, its stability, actual output power, and emission designator.
Transmitting antenna type and model and, if required, a typical pattern and maximum gain.
Transmitting antenna height above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type and model and, if required, a typical pattern and maximum gain.
Receiving antenna height above ground level and ground elevation above mean sea level.
Path azimuth and distance.

(3) For transmitters employing digital modulation techniques at frequencies below 15 GHz, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment shall also be furnished.

(4) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Every reasonable effort should be made by all carriers to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file his application without a response.

(5) The 30-day notification period is calculated from the date of receipt by the carrier being notified. If notification is by mail, this date may be ascertained by: (i) The return receipt on certified mail, (ii) the enclosure of a card to be dated and returned by the recipient, or (iii) a conservative estimate of the time required for the mail to reach its destination. In the latter case, the estimated date when the 30-day period would expire should be stated in the notification.

(6) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefor.

(7) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified.

(8) Where subsequent changes are not numerous or complex, the carrier receiving the changed notification should make an effort to respond in less than 30 days. Where the notifying carrier believes a shorter response time is reasonable and appropriate, it may be helpful for him to so indicate in the notice and perhaps suggest a response date.

(9) If it is determined that a subsequent change could have no impact on some carriers receiving the original notification, it is not necessary to coordinate the change with such carrier. However, these carriers should be advised of the change and of the opinion that coordination is not required for said change.

(10) Carriers should supply to all other carriers, or known carrier applicants, within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating carriers or applicants, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation.

(11) Carriers should keep other carriers with which they are coordinating advised of deletions or changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was completed, carriers may assume, unless notified otherwise, that such frequency use is no longer desired.

(e) *72–76 MHz band.* Stations operating in the 72–76 MHz band shall comply with the interference conditions set forth in §22.103.

(f) *Control and repeater stations (450 MHz band).* Control or repeater stations using the frequencies 454.025–454.650 MHz and 459.650 MHz shall not cause harmful interference to any other type of station authorized to use those frequencies and shall be secondary to rural radio and mobile service by other classes of stations.

(g) *890–952 MHz band.* (1) Stations in the 890–940 MHz band will not be protected against interference from industrial, scientific and medical equipment operating on 915 MHz or radiolocation stations in the 890–942 MHz band.

(2) Stations in the 890–940 MHz band shall not cause harmful interference to radiolocation stations in the 890–942 MHz band.

(3) New control and repeater stations will not be authorized in the 890–940 MHz band.

(4) Proposed stations in the 942–952 MHz band shall not cause harmful interference to existing stations (such proposed stations must also comply with the other conditions set forth in § 22.601(f).

(h) *Quiet zones.* Stations operating in the vicinity of Green Bank, West Virginia, Sugar Grove, West Virginia, and Boulder, Colorado, shall comply with the "quiet zone" provisions of §22.113.

§ 22.211 [Removed and reserved]

55. §22.211 is removed and reserved.

§ 22.101, 22.102, 22.207 Frequency tolerance, transmitter measurements.

Explanation

Both § 22.101 and 22.207 ("Transmitter measurements") deal with frequency tolerance. We propose to delete the transmitter measurement requirements set forth in § 22.207 and to relocate in § 22.101 the language which discusses frequency tolerance.

Present § 22.101(b) will be deleted since it does not pertain to services in Part 22. Likewise the reference to paragraph (b) in § 22.101(a) and note 2 and the last two lines of the table in (a) will be deleted. Paragraph 22.101(c) will be deleted since it only refers to § 22.106.

The phrase "unless otherwise specified in the instrument of station authorization" will not be retained since this is merely a way of saying that when the rules are waived, the licensee is not required to follow the rule waived. *See* our discussion of waivers.

We propose to delete § 22.207, which gives detailed requirements as to transmitter measurements, and adopt a simpler standard as a new section 22.101(b). Our concern is not with when or how often transmitter measurements are made. Instead, we are concerned with whether the licensee keeps its transmitter functioning properly. We feel that station licensees can, without guidance from the Commission, make their own determination as to the best procedure and timetable for maintaining the transmitter in proper operation. We therefore propose simply to specify frequency tolerance limits and leave it to the licensee's judgment as to how it conforms to these standards. We also propose to delete § 22.208(e), which

refers to the requirements established in § 22.207.

Likewise, § 22.102, which discusses frequency measuring devices, will be deleted. We feel licensees can assume the responsibility for measuring the transmitter output without detailed rules as to which measuring devices should be used.

§§ 22.102 and 22.207 [Removed and reserved]

56. §§ 22.102 and 22.207 are removed and reserved.

§ 22.208 [Amended]

57. § 22.208(e) is removed and reserved.

58. § 22.101 is as revised follows:

§ 22.101 Frequency Tolerance

(a) *Tolerance.* The carrier frequency of each transmitter shall be maintained within the following tolerances from the assigned frequencies:

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
25 to 50	0.002	0.002	0.005
50 to 450	.0005	.0005	.005
450 to 512	.00025	.00025	.0005
821 to 896	.0015	.0025	.00025
928 to 929	.0005		
929 to 932	.00015		
959 to 960	.00015		
2110 to 2220	.001		

(1) Below 512 MHz, power is transmitter phase power input to final frequency stage; above 512 MHz, power is transmitter power output, as specified in the Commission's Radio Equipment list.

(2) Equipment authorized on frequencies between 890 and 940 MHz on October 15, 1956, may have a frequency tolerance of 0.03 percent provided no harmful interference is caused.

(b) *Transmitter measurements.* The licensee of each station shall employ a suitable method to make sure the transmitter operates within the tolerances prescribed by these rules and on the assigned frequency.

§ 22.103 and § 22.501(f)(2) Standards governing use of 72–76 MHz Band.

Explanation

This frequency band is presently discussed in two different sections of Part 22, 22.103 and 22.501(f)(2). We propose to place all language under a single new rule § 22.103 which will be clearly titled and easier to locate within the rules. We also propose to eliminate language in § 22.103 which duplicates language in § 22.501.

We propose to revise certain language in the present § 22.103(a) so as to conform with the Commission's current waiver policy on co-located transmitters. As presently worded, the rule provides that 72 MHz applications for use of frequencies involving less than 10 miles separation from Channel 4 or 5 television station will be returned without action. This policy was adopted in order to avoid harmful interference to television signals. If, however, the transmitter is co-located with the television transmitter, harmful interference is actually minimized. The Commission regularly grants waivers of § 22.103(a) in such cases. We propose to update the language in this paragraph to take into account the co-location situation. The updated language will be inserted as part of the proposed § 22.103.

We propose to delete paragraphs 22.103 (a), (b), (c), and (d) since they are duplicated in § 22.501(f)(2) (i), (ii), and (iii).

It is unnecessary to prohibit assignments in the 74.6–75.4 MHz band since there are no stations authorized in the band. (There is one in the 75.4–76.0 MHz band on 75.4 MHz). These frequences are not listed in § 22.501(f).

Paragraph (f) restates note 1 to § 22.501(f)(1).

Beehive Telephone Company suggests we permit stations on the 72–76 MHz band within 10 miles of Channel 4 or 5 TV stations. We do not accept this suggestion. We have had problems with interference here before. This rule is necessary to prevent or correct such interference. We will entertain requests for waviers in cases where waivers can be justified.

§ 22.501 [Amended]

59. § 22.501(f)(2) is removed and reserved.

60. § 22.103 is revised to read as follows:

§ 22.103 Standards governing use of 72–76 MHz band.

(a) Applicants requesting authority to operate on frequencies in the 72–76 MHz band must agree to eliminate any harmful interference which such operations may cause to television reception on either Channel 4 or 5. If the interference cannot be eliminated within 90 days of the time the matter is first brought to a licensee's attention by the Commission, operation of the interfering fixed station shall be immediately discontinued.

(b) *Less than 10 miles.* Applications for use of 72–76 MHz band frequencies less than 10 miles from Channel 4 or 5 television stations will be returned without action, except where the proposed transmitter is co-located with the television transmitter. In the latter case, the application will be processed according to the 10–80 mile standard.

(c) *Between 10 and 80 miles.* Where an applicant proposes to locate a 72–76 MHz band fixed station between 10 and 80 miles for a Channel 4 or 5 television station, the applicant shall consult the charts included in this section and then submit a showing of the number of family dwelling units within the relevant area surrounding the proposed station. The applicant need not count family dwelling units 70 or more miles from the television station. In communities where television channels are assigned but not in operation, the applicant shall consider the community post office as the television station site.

(1) In cases where more than 100 family dwelling units are contained within the circle (determined according to this section), the number of dwelling units shall be stated and a factual showing made that:

(i) The proposed site is the only suitable location.

(ii) It is not feasible, technically or otherwise, to use other available frequencies.

(iii) The applicant has a definite plan, which must be disclosed, to control any interference that might develop to television reception from its operations.

(iv) The applicant is financially able and agrees to make such adjustments in the television receivers affected as may be necessary to eliminate interference caused by its operations.

(2) No station assignments shall be made in the frequency range 72.65–72.85 MHz within 80 miles from the site of a television transmitter operating on Channel 5 (or from the post office of a community to which such television channel is allocated, in cases where a television station has not been authorized).

(3) Stations authorized on December 1, 1961, in the 73.00 to 74.60 MHz band are not required to protect the radio astronomy service.

§ 22.104 Emission types.

Explanation

Paragraph (a) of the proposed rule restates the last sentence of § 22.603(a), § 22.603(d), and § 22.1003(b).

We have not retained the cross reference to "§§ 22.103 to 22.105" since we plan to rearrange these sections in a logical order by making them adjacent. The fact that cross-references are

needed indicates that these sections should be combined.

The present § 22.507(e) states that unmodulated emissions may only be used for temporary or short periods necessary for testing of equipment. This restricting language would prohibit the use of "Improved Mobile Telephone System" (IMTS) to prevent the indication of false channel occupation by spurious signals. Therefore we propose to amend our rules to permit such systems to operate. We have done so in § 22.104(b).

Paragraph 22.104(c) restates § 22.507(a).

Paragraph 22.104(d) restates § 22.603(a), (b).

Paragraph 22.104(e) restates § 22.1003 (a), (b). We propose to revise this rule slightly to permit A1–A4 and F1 to F4 emissions. This is not substantially different from our present rules, since only the emission types authorized on the license can be used, and any type can be authorized under § 22.1003(b).

61. § 22.104 is revised:

§ 22.104 Emission types.

(a) *General.* (1) Types of emissions not permitted by this section may be authorized upon a satisfactory showing of the need for them.

(2) Applications for unauthorized types of emissions shall describe the type of emission, the bandwidth necessary for satisfactory communications and the reason why it is requested. Application 401 shall be submitted.

(b) *Unmodulated emissions.* (1) Authorization to employ types of modulated emissions shall include authority to employ unmodulated emissions for temporary or short periods for equipment testing.

(2) Continuous unmodulated emissions may be utilized at a maximum of 1 watt output power to prevent the indication of false channel occupation.

(c) *Public land mobile.* Stations in the public land mobile service may be authorized to use type A1, A2, A3, F1, F2, F3 emissions.

(d) *Rural radio.* (1) Stations in the rural radio service may be authorized type A1, A2, A3, F1, F2, and F3 emissions.

(2) Stations in the rural radio service outside the continental United States may use A4 and F4 emissions.

(e) *Offshore radio.* Stations in the offshore radio service may be authorized type A1, A2, A3, A4, F1, F2, F3, and F4 emissions.

§ 22.106 Emission limitations.

Explanation

In Part 90 (Private Radio Services), the Commission has adopted new attenuation schedules, which are directly applicable to systems employing digital modulation techniques. We proposed to enact similar standards in Part 22 as an alternative to the existing emission limitations specified in present § 22.106(a). The alternative standards will be added as § 22.106(b). In addition, we proposed to delete and reserve present § 22.106(a)(2), which is primarily directed toward microwave systems licensed under Part 21.

We also request comment on whether additional rules (whether technical or otherwise) should be adopted in Part 22 to discuss digital transmissions. The commission has taken a number of recent actions to provide greater flexibility concerning digital (or non-voice) transmissions in the Private Radio Services. *See* PR Docket 80–416 (FCC 82–134); PR Docket 81–703 (FCC 81–460). Although the present rules in Part 22 place no restrictions on digital operations, we question whether rules should be added which would specify the circumstances under which digital systems may operate in the public mobile services.

We also request comment on whether rules should be added to Part 22 providing licensees with greater flexibility for in-band use of their assigned frequencies. The Commission discussed this matter in the 900 MHz proceeding in connection with that particular frequency allocation. *See* 89 FCC 2d 1337, paras. 67–68. Such flexibility would permit licensees to establish more than one channel within their authorized 25 kHz bandwidth. Although we do not propose specific technical standards in this notice, we solicit general comment on the desirability of adding this type of flexibility to Part 22.

62. § 22.106 is revised to read as follows:

§ 22.106 Emission limitations

(a) For transmitters other than those employing digital modulation techniques, the mean power of emissions shall be attenuated below the mean output of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibles;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log 10 (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attentuation.

(b) For transmitters not equipped with an audio low pass filter required by the provisions of paragraphs (f) and (g) of § 22.508, and for those employing digital modulation techniques, the power of any emission shall be attenuated below the unmodulated carrier power (P) in accordance with the following schedule:

(1) For those transmitters that operate in the frequency bands of 35.0 to 44.0 MHz, 72.0 to 73.0 MHz, 75.4 to 76.0 MHz or 152.0 to 159.0 MHz,

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 Log 10 (fd/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 29 Log 10 (fd2/11) decibels or 50 decibels, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log 10 (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

(2) For those transmitters that operate in the frequency bands 450.0 to 512.0 MHz, or 929.0 to 932.0 MHz,

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 Log 10 (fd/5) decibels:

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 Log 10 (fd/6.1) decibels or 50 plus 10 Log 10 (P) or 70 decibels, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the

authorized bandwidth: At least 43 plus 10 Log 10 (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

Note.—The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the unmodulated transmitter carrier power.

§ 22.107 Transmitter power.

Explanation

We propose to delete portions of this rule which have become obsolete through developments in technology.

The Mobile Services Advisory Committee suggested we delete all rated power output limitations. The only concerns of the Commission here are interference and coverage, which is a function of effective radiated power (ERP). ERP is a function of power output, losses between the transmitter output terminals and antenna input terminals, and antenna gain. Rule Sections §§ 22.505 and 22.506 specify the standards for ERP.

Since we do not specify either system loss or antenna gain, it is unnecessary for us to specify power output, which is the third factor used in computing ERP. Therefore, we propose to delete maximum power output. Of course, transmitters must still be type-accepted and cannot exceed the output power for which the transmitter in question has been type-accepted.

We will continue to ask for rated power output as a means of computing ERP.

63. § 22.107 is revised:

§ 22.107 Transmitter power.

The power which a station will be permitted to use in these services will be the minimum required for satisfactory technical operation commensurate with the size of the area to be served and local conditions which affect radio transmission and reception.

§ 22.108 Directional antennas.

Explanation

We propose to re-state this rule in positive terms as to when the rule applies, rather than when it does not apply. We also propose to delete sections (c), (d), and (e), which do not apply to Part 22.

Proposed paragraph (c) restates § 22.114.

Sections 22.112, 22.117(d), 22.206, 22.208(f) are deleted since they simply require compliance with Part 17. Compliance with Part 17 is now covered by § 22.109(a).

64. § 22.108 is revised:

§ 22.108 Directional antennas.

(a) *Directional antennas required.* Rural radio stations, control stations, repeater stations, and dispatch stations shall use a directional antenna with the major lobe of radiation in the horizontal plane directed toward the receiving station or the passive reflector with which the station communicates. A multi- or omni-directional antenna may be authorized if necessary where a station communicates with more than one point.

(b) *Beam width required.* Stations required to use directional antennas shall meet the standards indicated below. Maximum beam width is for the major lobe of radiation at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.

Frequency range	Maximum beam width (degrees)	Suppression (dB)
Below 512 MHz	80	10
512 to 1000 MHz	20	13
1500 to 2500 MHz	12	13

(c) *Temporary fixed station requirement.* Temporary fixed stations may use antenna structures not exceeding the height criteria in Part 17 of this chapter. Greater height requires FAA or FCC approval.

§§ 22.111, 22.112, 22.114, and 22.206 [Removed and Reserved]

65. §§ 22.111, 22.112, 22.114, and 22.206 are removed and reserved.

§ 22.208 [Amended]

66. §§ 22.208 is amended by removing and reserving paragraph (f).

§ 22.117 [Amended]

67. § 22.117 is amended by removing and reserving paragraph (d).

§ 22.109 Antenna structures.

Explanation

We propose to add several references to antenna structures which are currently found elsewhere in the rules. Specifically, sections 22.111, 22.112, 22.117(d), and 22.206 contain various provisions stating that Part 17 must be complied with. We propose to relocate these provisions to § 22.109(a).

We have received comments suggesting that when licensees share antenna structures, only one licensee need be responsible for antenna maintenance. We believe that each licensee must remain responsible for the proper maintenance of the antenna structure. The effort can be shared or subcontracted. Therefore, we propose to add language permitting licensees to delegate this maintenance function, without abdicating responsibility for such maintenance.

We propose to delete the language presently appearing in § 22.109(a). This paragraph states that the Commission has authority to order a change in antenna structure to prevent harmful interference. This subject is fully covered in our discussion of proposed § 22.100 ("Interferece") and is not necessary in § 22.109.

We also propose to delete the language currently appearing in § 22.109(b), relating to antenna changes. This paragraph duplicates what is already covered in proposed § 22.121, "Replacement of equipment."

Paragraph (c) does not apply to the Public Mobile Radio Service and will be deleted.

Paragraph (d) does little more than repeat other portions of § 22.109. We propose to remove § 22.109(d).

68. § 22.109 is revised:

§ 22.109 Antenna structure.

(a) *General provisions.* (1) Permittees and licensees shall not allow antenna structures to become a hazard to air navigation.

(2) Antenna structures shall be marked and maintained in accordance with § 303(q) of the Communications Act of 1934, as amended (47 U.S.C. § 303(q)) and Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. Specific lighting and marking requirements are described in FCC Form 715 or FCC Form 715A.

(b) *Maintenance contracts.* Permittees and licensees may by contract delegate the marking and maintenance requirements specified for these radio services. All licensees or permittees who make such contractual arrangements, including situations in which a common antenna is used, shall be responsible for the contractor's performance. The general requirements of § 22.205 apply.

§ 22.110 Antenna polarization.

Explanation

We propose to clarify this section by adding headings for the types of polarization discussed and by revising the language in a simpler, more readable format.

69. § 22.110 is revised:

§ 22.110 Antenna polarization.

(a) *Vertical.* The following types of stations shall employ an antenna which radiates a vertically polarized signal:

(1) base, mobile, dispatch, and auxiliary test stations operating in the Domestic Public Land Mobile Radio Service;

(2) Offshore Telephone stations;

(3) Stations operating in the 72–76 MHz band;

(4) Stations operating in the Cellular Radio Telecommunications Service.

(b) *Horizontal.* (1) Stations not required by paragraph (a) of this section to use vertical polarization shall employ horizontal polarization.

(2) Rural subscriber stations communicating with base stations may employ vertical polarization.

(c) *Circular.* Upon satisfactory showing that transmission will be improved and harmful interference will be reduced, the Commission may authorize a station, other than those listed in paragraph (a)(1) of this section, to radiate a circularly polarized signal.

(d) *Above 890 MHz.* Domestic Public Land Mobile stations operating above 890 MHz are not limited as to the type of polarization, except that such stations are subject to the rules concerning harmful interference.

§22.115, 22.116 Typographic data.

Explanation

Section 22.115 ("Method of determining average terrain elevation") has been rewritten in plain English and is more concise. We propose to delete unnecessary specificity.

The profile graphs required for stations in the 470–512 MHz band belong here rather than in § 22.501(1), Tables B, C, D, note 1. This eliminates a large amount of unnecessary duplication. The milage separations in (a)(3) are taken from the tables to § 22.501(1).

The Mobile Services Advisory Committee suggested a clarification as to what is included in average elevation when the radial extends over water or foreign territory but crosses U.S. land between 10 miles and 75 miles of the proposed station. Paragraph (a)(4) clarifies what is included. We propose to delete the last sentence of present § 22.115 which lists various ways of computing average elevation. This requirement is permissive in the present rule, and today this figure can be determined by computer or other methods. The last sentence of § 22.115 is unnecessary.

Proposed paragraph (c) is in response to a suggestion by the Mobile Services Advisory Committee concerning assumed average elevation in certain areas. At present we propose to assume an average elevation of 10 feet for Miami alone. We expect, however, that there are large areas south of some specified latitude, such as Florida, in which an average elevation can be assumed, and we request comments which address this point.

We propose to rewrite § 22.116 in plainer language as a new § 22.115(d). The present § 22.116 is one very long paragraph. This interferes with readability.

We propose to delete the language which specifies one location where U.S. Geological Survey maps can be obtained. In fact, these maps are readily available at a number of locations. There even are listings in the teleophone book for USGS map sales. We therefore consider it unnecessary to list sources of topographic data.

We propose to eliminate the filing requirement for topographic maps, since they are no longer used by the Commission except in rare situations. In those unusual cases we can request the maps. This change was proposed by the Mobile Services Advisory Committee. It has been suggested that this change will save about $30 per application.

The filing change proposed here will be reflected in § 22.15(j)(8). We will retain the discussion of topographic maps in § 22.115, since it explains how to draw the radials and does not refer to filing. The radials must still be drawn. Only the filing will be eliminated.

70. §22.115 is revised:

§ 22.115 Topographic data.

(a) *Radials.*

(1) *General case.* Average terrain elevation shall be determined from the elevation betweeen 2 and 10 miles from the antenna site. Radials shall be drawn from the antenna site extending for 10 miles. Eight radials shall be drawn for each 45 degrees of azimuth starting from True North.

(2) *Principal Community.* The radial to the principal community to be served shall be extended beyond 10 miles if necessary, or an additional radial shall be drawn.

(3) *Co-Channel or adjacent stations.* (i) Additional radials shall be drawn to co-channel stations within 75 miles.

(ii) In the case of Public Land Mobile stations in the 470–512 MHz band, additional radials shall be drawn to co-channel TV stations within 162 miles and to adjacent channel TV stations within 67 miles.

(4) *Foreign territory or water.* When a portion of a radial extends over foreign territory or water, such portion shall not be included on the profile graphs or in the computation of average elevation unless the radial passes over United States land within 83 miles of the station.

(b) *Profile graphs.* (1) The profile graph for each radial should be plotted by contour intervals of 40 to 100 feet so that, where the data permits, at least 50 points of elevation are generally evenly spaced on each radial. If the terrain is very rugged so that the use of 100- foot intervals would result in several points in a short distance, 200- or 400-foot contour intervals may be used. If the terrain is uniform or gently sloping, the smallest contour on the topographic map should be used, even though only relatively few points may be available.

(2) The profile graphs must:

(i) indicate the topography accurately;

(ii) be plotted with distance in miles on the horizontal axis and elevation in feet above main sea level on the vertical axis;

(iii) show the elevation of the center of the antenna's radiating system;

(iv) be plotted on rectangular coordinate paper or curvature of earth paper (although it is not necessary to consider the curvature of the earth); and

(v) indicate the source of the data.

(c) *Computation of average terrain elevation.* (1) The average elevation of the 2 to 10 mile portion of each radial shall be determined from the profile graphs. Profile graphs shall not be submitted.

(2) In Miami, Florida, average terrain elevation is assumed to be 10 feet.

(d) *Maps.* The exact transmitter site shall be identified on a U.S. Geological Survey topographic map or a copy. A portion of a map may be used if the identifying information is retained.

§ 22.117 Transmitters.

Explanation

We propose to combine § 22.117, and § 22.118 into one rule. Each of these rules has some paragraphs which deal with transmitters. We propose to group all such paragraphs under one rule, § 22.117.

Proposed paragraph (a) condenses old § 22.117 without the existing discussion of engineering considerations to be used in selecting transmitter sites. While these engineering considerations may be practical factors, they are not requirements of the Commission. We therefore consider it unnecessary to include such a discussion in the rules. We propose to eliminate this portion of the rule.

The preference of the Commission for nondirectional antennas and low power transmitters (old § 22.117(a), (b)) has been retained but phrased in terms of efficient and effective antenna systems.

Old § 22.117(c) has been restated as the last sentence of new § 22.117(a). It is

unnecessary to detail the contents of a report about developmental authorization. These requirements are already specified in the rules pertaining to developmental authorizations.

We propose to add a new subsection (d) which provides that additional transmitters may be constructed without Commission authorization so long as the Commission is so notified, and the authorized service area is not increased in any direction.This change will permit licensees to promptly install fill-in transmitters and will keep the Commission's records accurate as to where all transmitters are located. We will also add language to sate that, prior to construction, licensees must have received FAA approval of the antenna structure. Even though FAA requires such prior approval, this requirement in our rules will ensure that potential aviaiton hazards are not overlooked. We will also add language to comply with § 1.1305, concerning "major actions" and environmental statements. Essentially, this rule requires prior Commission approval (and an environmental statement) for antennas which exceed 300 feet in height.

This proposal complies with the requirements of § 301 of the Communications Act. Licenses issued in the public mobile service will be issued as blanket authorizations to include additional "fill-in" transmitters which do not enlarge the service area.

§ 22.118 [Removed]

71. § 22.118 is removed.

72. § 22.117 is revised:

§ 22.117 Transmitters

(a) *Location.* (1) The transmitter of a base station should be located so that the area of interference-free service includes the urban population of the area to be served.

(2) Efficient and effective antenna systems are preferable to high-power antenna systems.

(3) Where the transmitter location may not comply fully with the Commission's rules and policies, the Commission may require site survey tests to be made under a developmental authorization.

(b) *Installation.* (1)(i) The transmitter shall be installed so that unauthorized persons will not have access to the transmitter or its control point(s).

(ii) Transmitters in the public mobile service shall be installed so that controls which may cause the transmitter to exceed its authorized parameters are accessible only by properly licensed personnel.

(2) Transmitter control circuits shall be installed so that grounding or shorting any line in the control circuit shall not cause the transmitter to radiate.

(3) Each transmitter (other than hand carried or pack-carried) and each control point shall be equipped with some means of indicating when the transmitter's control circuits have been placed in a condition to activate the transmitter. Each transmitter shall be equipped so that the transmitter can be turned on and off independently of any remote control circuits.

(c) *Modulation filters.* In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter shall be equipped with a low-pass or band-pass modulation filter of suitable performance characteristics. In those cases where a modulation filter is employed, the modulation filter shall be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter.

(d) *Additional transmitters.* Licensees may construct and operate additional transmitters without obtaining prior Commission approval, provided:

(1) the currently authorized service area is not enlarged in any direction;

(2) the Commission is notified of the new transmitter(s), through the filing of a form 408;

(3) full FAA approval has been obtained. The notification shall state that such clearance has been granted; and

(4) the application is not a "major action" as defined by rule § 1.1305. If it is a major action, then prior approval is required, and the requirements of § 1.1311 apply.

§ 22.118 Transmitters.

Explanation

We propose to restate §§ 22.118(a) and 22.118(f) in new § 22.117(b). The provision in § 22.118(f), concerning the grounding rule, appears to constitute good engineering practice in any station. We invite comments on whether this requirement needs to be retained at all.

We propose to relocate § 22.118(b), pertaining to modulation filters, to a new § 22.117(c).

We propose to combine §§ 22.118 (c) and (e) into § 22.117(b)(3). These sections are presently written in terms of pilot lamps and meters. We propose to eliminate the facilities-oriented language and to rewrite the rule in simple terms of the licensee's responsibility. We invite comment on whether even this simplified requirement is outdated by present technology.

We propose to delete existing §§ 22.118(d). Elsewhere in this order, we have propose to relocate (d)(1) to § 22.515 (control points). Paragraph (d)(2) is related to operator log requirements, which we propose to delete (*See* our discussion of operator log requirements).

§ 22.118(d), 22.205(h)(3), and 22.208(g) Operator log requirements.

Explanation

These sections require that licensees maintain an operation log book in which the person operating the station enters such information as time and duration of each transmission, the operator's class, serial number, and expiration date of license number, etc. These sections have become increasingly out of date. Today, the only licensees who can comply with these requirements are those with manual facilities, since it is not physically possible to maintain such logs where the facilities are automated. The staff routinely grants requests for waiver of these requirements to the increasing number of licensees utilizing automated facilities. Even in the limited number of cases where such logs are maintained (*i.e.*, where the facilities are manual) the information is rarely, if ever, used. When the commission's enforcement staff conducts a field investigation, it typically focuses on other matters and examines different records. The submission and processing of these waiver requests creates substantial administrative burdens on both the public and the staff with little if any accompanying benefit. We question whether it is in the public interest to continue to impose the logging requirement on only one group of licensees where the records maintained are rarely, if ever, used. We therefore propose to delete all operator log requirements and also thereby eliminate the massive "logging waiver" procedure which currently burdens the mobile services licensing process.[3]

Section 22.118(d), (e) are discussed in connection with 22.515, control points, and 22.117, transmitters.

73.

§ 22.205 [Amended]

§ 22.205(h) is removed and reserved.

§ 22.208 [Amended]

74. § 22.208(g) and (h) are removed and reserved.

[3] We do not propose to eliminate §22.208(f), which discusses logging entries related to illumination of antenna structures. These requirements are set forth specifically in Part 17 and apply across the board to all radio services, including those in Part 22.

§ 22.120 Type Acceptance of Transmitters.

Explanation

We propose to revise this section in a more logical and more readable format. Subsections (a) and (d) are combined into § 22.120(a), with a heading added. Subsections (b) and (c) are reorganized into two subjects, procedures and lists, with headings added to each subsection. We shall also include language concerning type-acceptance of cellular equipment.

75. § 22.120 is revised:

§ 22.120 Type-acceptance of transmitters.

(a)*Type-Acceptance required.* All transmitters shall be type-accepted for use under this part of the Rules, except:

(1) developmental station transmitters; and

(2) any transmitter shown on an instrument of authorization which operates on a frequency in the 890–940 MHz band and which has not been type accepted, may continue to be used by the licensee, provided the transmitter otherwise complies with the rules of the Commission.

(b) *Procedure for type-acceptance.* (i) Transmitters shall be type-accepted by the Commission pursuant to Subpart J of Part 2 of this chapter (§ 2.901 *et seq.*).

(ii) Manufacturers of transmitters shall apply to the Commission for type-acceptance.

(iii) An applicant for a station authorization may apply for individual transmitter type-acceptance.

(c) *Lists of type-accepted transmitters.* Type-accepted transmitters are listed in the Commission's "Radio Equipment List," which is available for inspection at the Commission in Washington, D.C., and its field offices. Type-accepted individual transmitters normally will not be included in this list, but only specified on the station authorization.

(d) *Cellular equipment.* In addition to the normal type-acceptance procedures contained in Part 2 of this Chapter and to the technical standards contained in this Part, transmitters designed for operation under Subpart K of this Part shall comply with requirements contained in the Commission's cellular system compatibility specification (See § 22.915).

§ 22.121 Replacement of equipment.

Explanation

Presently § 22.121 provides that a licensee may replace the station's transmitter if the replacement equipment is type accepted and the Commission is notified. This notification requirement serves the useful purpose of permitting the Commission's staff to conform the details of the station license when equipment changes are made. The notification requirement is, however, an administrative burden on both the public and the staff. We therefore propose a less burdensome alternative concerning minor changes which will still keep the Commission's records accurate. Instead of notifying the Commission at the time that minor equipment changes (changing type-accepted transmitters, for example) are made, we propose that the licensee include such changes as a part of the next application filed (*e.g.*, a renewal application, a modification application). We will retain the present requirement that only type-accepted equipment be used.

In the case of major changes, such as exceeding the station's specifications in the license, a construction permit will still be required. *See* new § 22.121(b).

At the Mobile Services Advisory Committee meeting it was suggested that decreases in effective radiated power should be permitted since a licensee is likely to decrease his overall coverage area. We agree and have proposed such a rule.

Proposed § 22.121(a)(2) is taken from present § 22.109.

Since present paragraph (c) details the notification, it is deleted.

We propose to delete paragraph (d), which discusses replacement of specific types of equipment. Proposed paragraph (a) is written in general terms which include the situation described in present paragraph (d).

GTE in its comments suggested we permit 1.5 dB increases or decreases in effective radiated power. Our proposed rule is more liberal on decreases. We do not propose to permit increases. Many licensees are now transmitting to the limits of their interference contours for co-channel stations. A flexible rule for increases would require additional regulatory oversight and could well increase the number of interference complaints filed with the Commission. Therefore, we do not propose to allow blanket increases.

We also propose to eliminate the requirement of notification of the Engineer in Charge. This is an administrative burden which serves little practical function. We also propose similar revisions for §§ 22.520(a) (dispatch stations), 22.611(a) (rural radio), and 22.1007(a) (offshore radio).

76.§ 22.121 is revised:

§ 22.121 Replacement of equipment.

(a) A licensee may replace any equipment in its station without authorization if:

(1) the equipment is currently type-accepted for use in this Part of the rules;

(2) antenna height or antenna structure height, whichever is greater, is not increased above the authorized height; and

(3) the equipment does not cause the station to increase its effective radiated power in any direction, or otherwise violate the rules of this part.

(b) Except as provided in paragraph (a) of this section, a licensee must obtain a construction permit prior to making changes to or replacements of station equipment.

(c) When equipment is replaced under paragraph (a) of this section, the licensee shall notify the Commission of such changes upon the next application for renewal or modification of the license.

§ 22.122 Microwave digital modulation.

Explanation

This section discusses facilities which are not included in the Public Mobile Radio Services. It refers to radio service covered by Rules Part 21. Accordingly, we propose to delete the language and place § 22.122 in reserve. Sections 22.100(d)(3) and 22.106(a)(2), which also discuss digital modulation, will at the same time be deleted and reserved.

§ 22.122 [Removed and reserved]

77. § 22.122 is removed and reserved.

§ 22.100 [Amended]

78. § 22.100(d)(3) is removed and reserved.

§ 22.106 [Amended]

79. § 22.106(a)(2) is removed and reserved.

§ 22.201 Posting station licenses.

Explanation

We propose to make this rule more flexible. AT&T suggested we eliminate the requirement that a certified copy of the station license be posted with the station or control point. AT&T suggested a copy is sufficient and the requirement of a certified copy is burdensome.

This suggestion has merit, and we will revise the rule so that licensees retain the original authorization as part of the station records and simply post a photocopy of the authorization at each control point.

80. § 22.201 is revised:

§ 22.201 Posting station licenses.

(a) The current original authorization for each station shall be retained as a permanent part of the station records but need not be posted.

(b) A clearly legible photocopy of the authorization for each base or fixed station shall be posted at every control point of the station.

§ 22.204 FCC publications required for reference.

Explanation

This section lists a number of publications required or suggested to be available at the control point or elsewhere.

We feel that it is unnecessary to require that a copy of the rules be at any particular place, or that a licensee have the whole of Part 22. While it may be advisable, the Commission need only be concerned with whether the rules are complied with. We therefore propose to eliminate this requirement and to delete § 22.204. Licensees will still be expected to comply with the Commission's rules, and we propose to specify this as part of the rule discussing licensees' general responsibilities (*see* proposed § 22.205).

§ 22.204 [Removed and reserved]

81. § 22.204 is removed and reserved.

§ 22.205 Operator and maintenance requirements (licensee responsibility).

Explanation

We propose to simplify and relax our operator and maintenance requirements. We also propose to add a new subsection establishing the general standard that licensees will be responsible for the proper operation and maintenance of their facilities. We propose this general standard as a substitute for the various detailed requirements currently in § 22.205 concerning operator licenses and maintenance personnel licenses. Our concern is that licensees keep their facilities in proper working order. Furthermore, competition is quite vigorous among carriers. These factors are strong economic incentives for ensuring that all equipment is in proper working order. We believe these forces of the marketplace are at least as effective as government requirements concerning what class license should be held by operators and maintenance personnel. We therefore propose to eliminate various operator and maintenance licensing requirements in this rule. This proposal is consistent with the requirements of the Communications Act. Section 318(4) provides that, for frequencies allocated in Part 22, the Commission may waive the operator licensing requirements. We therefore call for comment on whether such a waiver would serve the public interest, convenience, or necessity.

We propose to add a paragraph permitting licensees and permittees to make contracts with other parties for the performance of maintenance. The proposed language stresses that the licensee will remain fully responsible for the operation and maintenance of the station.

We also propose to delete §§ 22.102, 22.207, and 22.208(e). These rules discuss transmitter and frequency measurement requirements. Our concern is not with when or how often such measurements are made but rather with whether the licensee keeps its transmitter functioning properly. We therefore propose to delete these requirements. We propose simply to specify frequency tolerance limits in § 22.101 and leave to the licensee's judgment the best procedure for conforming to these standards.

We shall also delete § 22.203, "Posting of operator licenses," since we propose to eliminate the operator licensing requirements themselves.

§§ 22.102, 22.203, and 22.207 [Removed and reserved]

82. §§ 22.102, 22.203, and 22.207 are removed and reserved.

§ 22.208 [Amended]

83. § 22.208(e) is removed and reserved.

84. § 22.205 is revised:

§ 22.205 Operator and maintenance requirements (licensee's general responsibility).

(a) *General.* The station licensee shall be responsible for the proper operation and maintenance of the station. No operator's license is required for a person to operate or perform maintenance on facilities authorized in these radio services. The station licensee shall at all times comply with the Commission's rules, regulations, and policies.

(b) *Maintenance by contract.* (1) When maintenance for a radio station or antenna structure is provided for by agreement with an entity unrelated to the licensee (or permittee), the agreement shall be in writing.

(2) The licensee shall retain effective operational control over the radio facilities and their operation.

(3) The licensee shall remain fully responsible for the quality of maintenance, for compliance with all the Commission's rules, and for the general instructions given to the contractor.

§ 22.206 Inspection and maintenance of antenna structure.

Explanation

This section states that the licensee must inspect and maintain its antenna structure. AT&T has suggested that where two or more licensees share an antenna tower, they should be permitted to designate one licensee to perform maintenance functions for all licensees.

We believe this suggestion has merit. Licensees should be permitted to make such arrangements if they choose. Rule § 22.111, "Simultaneous use of common antenna structure", presently permits shared use of antenna structures. In our discussion of § 22.109 we have proposed to deregulate even further than suggested by AT&T. Rather than specifying that only licensees may maintain antenna structures, we believe licensees should have full discretion in deciding how they meet this responsibility; *i.e.*, whether by contract with other licensees or by independent maintenance personnel. This proposal is consistent with the general approach discussed in proposed § 22.205, "Operator and maintenance requirements". Since this matter is covered by revised § 22.109 and 22.205, we proposed to delete § 22.206.

§ 22.206 [Removed and reserved]

85. § 22.206 is removed and reserved.

§ 22.209 Communications concerning safety of life and property.

Explanation

This section requires that licensees, as they handle and transmit messages, give priority to messages concerning the safety of life or property. This rule also prohibits fraudulent messages concerning emergency situations. While this rule has the laudable purpose of encouraging prompt response to emergency situations, it has become increasingly outdated by advancing technology. Licensees with automated facilities have no way of knowing which messages concern emergency situations, since no operators are used to handle and transmit messages. It is not always possible to assign priorities to messages received on automated facilities. We therefore propose to delete this rule, not because of lack of concern for emergency situations but because this rule is directed at facilities which in many cases are no longer used.

We also propose to delete subsection (b) concerning fraudulent messages. This paragraph repeats what is already stated in § 325(a) of the Communications Act concerning false

distress signals. We therefore propose to eliminate this duplication.

§ 22.209 [Removed and reserved]

86. § 22.209 is removed and reserved.

§ 22.212 Equipment, service and maintenance tests.

Explanation

This section has been the subject of much comment to which this proposed rule responds.

GTE suggested that present § 22.212(a)(4) be revised. This paragraph appears to require that service on an existing station be discontinued until authorized modifications are completed. It is necessary to clarify that the prohibition on service to the public applies only during the initial construction of the station.

We propose to eliminate the notification of commencement of tests to the Engineer-in-Charge (EIC). These notifications are unnecessary given the increasing availability of the automated data base.

We propose to eliminate the two-day notification requirements set forth in paragraphs (a)(1) and (b)(1) as being unnecessary and disruptive. These rules require notification to the Commission two days before operating proposed facilities. In the case of modification of existing facilities, for example, these paragraphs would require a carrier to discontinue service to the public for 4 days in order to comply with the notification requirements of these rules. This requirement is burdensome and unnecessary, and we propose to delete paragraphs (a)(1) and (b)(1).

Paragraphs (a) and (b) of the present rule are ambiguous as to whether tests are required. The rule says the "permittee is authorized." However paragraph (c) is an exception to when tests are required.

We believe this section should reflect the changes proposed elsewhere—the licensee shall be responsible for the proper operation and maintenance of this station. Therefore, the testing rule has been phrased in permissive terms.

Likewise, we have considered AT&T's suggestion that the period of testing be left to the licensee and not set at a rigid 10-day period. We believe this is a good suggestion for deregulation, and we propose to eliminate the 10-day period.

The redundancies in paragraphs (a) and (b) have been eliminated in the proposed rule.

The proposed rule states that equipment tests are only permitted before the construction permit expires. This rule will emphasize that operation of constructed facilities is unauthorized beyond the expiration date of the construction period.

We also propose to eliminate the service tests category. Since we propose to revise form 403 as a notification form, permittees may commence service to the public without performing service tests.

87. § 22.212 is revised:

§ 22.212 Tests.

(a) *Equipment tests.* When construction or modification of a station has been completed in accordance with the construction permit, the permittee may conduct equipment tests until the expiration of the permit. No service may be furnished to the public during equipment tests unless the construction permit is for an existing station.

(b) *Maintenance tests.* Licensees are permitted to make such tests as are necessary for the proper maintenance of their stations.

(c) *Tests in general.* All tests shall be conducted so as not to cause interference to other communication systems. The Commission reserves the right to cancel or modify the permittee's testing authority when the public interest so requires.

§ 22.213(d) Station identification.

Explanation

This paragraph restates the present rule and eases the burden of station identification. Our rules presently require 3 repetitions of the call sign every half hour. We believe this requirement is unnecessarily burdensome and propose to modify the identification requirement to once every half hour, which is adequate for local cooperative interference resolution and FCC enforcement activities.

We also propose to delete the reference in § 22.213(d)(2) to radio-photo and facsimile transmission, which are rarely if ever used in the public mobile services.

We propose to eliminate the speed of transmission requirement in § 22.213(d)(2). If the speed is too rapid, an interested observer, such as the Field Operations Bureau, can slow down a tape recording of the transmissions. We also propose to eliminate the "QRA de" requirement for tone signaling. Since this code word is not necessary for telephony (*see* present § 22.213(d)(1)), we do not consider it necessary for other transmissions. Instead we will provide simply that station identification, regardless of the type of transmission, may be made either by aural transmission or automatic tone signaling.

88. § 22.213(d) is revised:

§ 22.213 Station identification.

* * * * *

(d) Where transmission of station identification is required, such transmission shall be capable of being received and understood at an appropriate receiver, without the use of special channeling or transmission unscrambling devices.

The identification shall be made once every half-hour by means of Morse code or aural transmission.

§ 22.214, 22.610, 22.611, 22.1006, 22.1007 Temporary fixed stations.

Explanation

Beehive Telephone Company suggests that we delete § 22.610 (a) and (b). These paragraphs require an authorization for temporary fixed stations. Beehive suggests that the requirement of prior authorization be eliminated, citing the delay and expense involved in preparing applications and obtaining licenses. This proposal would expedite the Commission's current licensing procedures. However, the Commission also has the critical duty of preventing interference, not only between rural radio stations, but also between rural radio and public land mobile stations. Beehive's proposal would mean that every applicant could go on the air even though experience has shown that unanticipated serious interference problems frequently occur. We therefore conclude that this proposal is not a desirable means to expedite the licensing process, because it is outweighed by potential public harm.

We propose to simplify and reorganize the rules sections which discuss temporary fixed stations. Sections § 22.610 and § 22.611 concern Rural Radio; §§ 22.1006 and 22.1007 concern Offshore Radio. Section 22.214 discusses temporary fixed stations which are close to the Canadian or Mexican border. We propose to relocate this section so that it is part of the other rules listed above. *See* proposed §§ 22.610(c) and 22.1006(c).

We propose to update the language in current § 22.610(a)(1). That paragraph prohibits services which are initially known to be longer than six months from being authorized as temporary fixed stations. This prohibition is not fully consistent with current policy or procedures in that rural subscriber stations are often authorized initially as temporary fixed stations and later become fixed after the subscriber is satisfied with the service.

We propose to delete the requirement that the Commission and the Engineer-

in-Charge (EIC) be notified when operation is commenced. In § 22.212 we propose to permit stations to start service and equipment tests without notifying the FCC or the EIC. We propose to do the same here by deleting §§ 22.611 and 22.1007.

89. § 22.610 is revised:

§ 22.610 Temporary fixed stations (Rural subscriber, interoffice, and central office stations).

(a) *General.* Upon proper application (FCC Forms 401, 408) for the frequencies listed in § 22.601, an authorization may be issued to operate a temporary fixed station. The station shall be used for rural subscriber, interoffice, or central office service only when regular facilities are not available or when such service is disrupted by storms or emergencies.

(b) *Six month limitation.* When a temporary fixed station is to, or does, remain at a single location for more than six months, an application for authorization as a permanent fixed station (FCC Forms 401, 408) must be made at least 30 days before the end of the six month period.

(c) *International Communications.* Temporary fixed stations shall not transmit between the United States and Canada or Mexico without prior authorization from the Commission. Application for authorization shall be made at the earliest possible time to permit coordination with Canada or Mexico.

90. § 22.1006 is revised:

§ 22.1006 Temporary fixed stations (Offshore Radio).

(a) *General.* Upon proper application (FCC Forms 401, 403) for the frequencies listed in § 22.1001(a), an authorization may be issued to operate a temporary fixed station. The station shall be used for Offshore Radio service only when regular facilities are not available or when such service is disrupted by storms or emergencies.

(b) *Six-month limitation.* When a temporary fixed station is to, or does, remain at a single location for more than six months, an application for authorization as a permanent fixed station (FCC Forms 401, 403) must be made at least 30 days before the end of the six month period.

(c) *International Communications.* Temporary fixed stations shall not transmit between the United States and Canada or Mexico without prior authorization from the Commission. Application for authorization shall be made at the earliest possible time to permit coordination with Canada or Mexico.

§§ 22.214, 22.611 and 22.1007 [Removed and Reserved]

91. §§ 22.214, 22.611 and 22.1007 are removed and reserved.

§ 22.300 Business records.

Explanation

Section 22.300 requires licensees to separate the records, and presumably the accounting system, of the licensed facilities from other activities of the licensee.

We believe this requirement should be deleted. The carriers covered are not rate base regulated by the Commission, and the services are provided in a competitive environment. Furthermore, since we do not review the tariffs of common carriers licensed under this part, except in rare cases, for example, in cases involving interstate services or anticompetitive practices. Finally, the requirement imposes a significant record-keeping burden on small business which is not justified by any public interest consideration.

We therefore propose to delete this rule and eliminate the separate records requirement.

§ 22.300 [Removed and reserved]

92. § 22.300 is removed and reserved.

§ 22.301 National defense.

Explanation

This section is the same as 47 C.F.R. § 2.406 which applies to this part.

Therefore we propose to delete § 22.301.

§ 22.301 [Removed and reserved]

93. § 22.301 is removed and reserved.

§§ 22.302 and 22.306 Notices of violation and other official communications.

Explanation

Section 22.302 discusses the requirement that a prompt and full response be made to a notice of violation issued by the Commission. Section 22.306 requires a response from any other type of official communication from the Commission (an inquiry letter, for example). Since these two sections relate to similar topics, we propose to combine them into one section and to revise the discussion into a more readable format.

94. § 22.302 is revised:

§ 22.302 Duty of permittees and licensees to respond to official communications.

(a) Permittees and licensees are required to respond to official communications with reasonable dispatch and according to the tenor of the communication. Failure to do so will be considered by the Commission to (1) reflect adversely on a person's qualifications to hold licenses, or (2) create liabilities for other appropriate sanctions.

(b) Any person receiving official notice of an apparent or an actual violation of a federal statute, international agreement, Executive Order, or regulation pertaining to communications shall respond in writing within 10 days to the office of the Commission originating the notices. If an answer cannot be sent within 10 days, an acknowledgement and answer shall be sent as soon as possible with a satisfactory explanation of the delay.

(c) All answers to official communications shall be complete and self-contained without reference to other communications unless copies are attached.

§ 22.306 [Removed and Reserved]

95. § 22.306 is removed and reserved.

§ 22.303 Discontinuance of station operation.

Explanation

We proposed to revise this rule to be more concise and practical. We have followed the revision already made in § 90.157, pertaining to the private radio services. Specifically, we propose to eliminate the burdensome notification requirements presently associated with temporary discontinuances but we still intend to cancel any license if a permanent discontinuance occurs.

We believe the notification requirement for temporary discontinuance is unnecessary. Such discontinuances have not proven in the past to be either frequent or long-lasting. Obviously, licensees have a strong economic incentive to remain in service, and to avoid outages if at all possible. The notification requirement imposes a burden on them with no concomitant public benefit (excepting, of course, notification of permanent discontinuance). We therefore propose to eliminate the notification requirement but to add the presumption that a station be considered to have been permanently discontinued if operation ceases for 90 days. We invite comment on our choice of a 90-day discontinuance period for these radio services.

The notification to the Engineer in Charge has been eliminated as suggested by the Mobile Services Advisory Committee. This requirement appears to be an unnecessary duplication of filing for the license.

96. § 22.303 is revised:

§ 22.303 Discontinuance of station operation.

If a station licensed under this part discontinues operation on a permanent basis, the licensee shall forward the station license to the Commission for cancellation. For the purposes of this section, any station which has not operated for 90 continuous days is considered to have been permanently discontinued.

§ 22.304 Tariffs, other reports.

Explanation

This section restates present § 22.304.

For the first time in Part 22 we have explicitly required radio common carriers to file Form L, the "Annual Report of Licensee in Public Mobile Radio Service." It should be noted that "radio common carriers" has been defined to be all non-wireline common carriers. *See* § 22.2 ("Definitions").

97. § 22.304 is revised:

§ 22.304 Tariffs, other reports

(a) All common carriers shall file the reports required by the rules of this chapter. (See §§ 1.771–1.815).

(b) All radio common carriers shall file the Annual Report on Form L within 90 days of the end of the calendar year.

§ 22.305 Reports concerning amendments to charters.

Explanation

This section requires that all amendments to corporate charters and partnership agreements be filed with the Commission. However, we do not review these charters for compliance with any laws or make any regulatory use of them. We prefer to leave such regulation to other state or federal agencies with more direct interest in them.

This section has been a burden on licensees without a corresponding regulatory benefit. We propose to eliminate all requirements of filing corporate charters or partnership agreements.

§ 22.305 [Removed and Reserved]

98. § 22.305 is removed and reserved.

§ 22.308 (proposed) Incidental communication services.

Explanation

In certain cases in the past, the Commission has approved licensees' requests to use their assigned frequencies and licensed facilities to provide various communication service in addition to public mobile radio service. Examples are weather information and stock market quotes. In these situations, the Commission has carefully reviewed the details of each licensee's proposal and has specified conditions to ensure that any such service is not at the financial expense of subcribers to mobile service, would not cause deterioration to the quality of service, and would not discourage the growth or availability of mobile service. The Commission's action in granting such requests has been based on the premise that such incidental services meet a public demand and can be fashioned so as to make more efficient use of spectrum without interfering with the growth or availability of public mobile radio service. We propose to add a rule stating the general conditions under which incidental (non-mobile) communications services may be provided.

Rule § 22.509(e)(2) already provides for one alternative to mobile service, namely a service to distribute information to multiple fixed locations rather than to mobile units. The rule specifies that the service must be provided by subaudible means and must not interfere with normal communications. Sections 22.509 (b) and (c) also provide for service to stations on board vessels (under certain conditions). The proposed rule § 22.308 is more general in scope than § 22.509(b) and § 22.509(e)(2). We therefore propose to delete §§ 22.509(b), (c), and 22.509(e)(2), which are duplicative of what is covered in proposed § 22.308.

We seek comment on the criteria which should apply to permit incidental services to develop while protecting the public mobile services from interference. We seek further comment on whether prior approval should be required or whether notification is sufficient or necessary.

99. § 22.308 is added:

§ 22.308 Incidental communication services.

Licensees authorized to operate in these radio services may also use their facilities to provide other communications services incidental to those specified in the authorization, provided that:

(a) the incidental service does not interfere with the public mobile radio service specified in the authorization;

(b) The costs or charges of subscribers who do not wish to use the other communication service are not increased;

(c) the quality of service does not deteriorate, and neither growth nor availability of the licensee's authorized service is diminished;

(d) the provision of the incidental service does not violate and is not otherwise inconsistent with other Commission rules, regulations, and policies; and

(e) the Commission is notified prior to the provision of any incidental communication service.

§ 22.509 [Amended]

100. § 22.509(b), (c) and (e)(2) are removed and reserved.

§ 22.309 Representations [New].

Explanation

This proposed new section has two purposes. Paragraph (a) restates the duty (expressed in Rule § 1.65) of all parties to fully disclose all relevant information to the Commission, not to mislead the Commission, and to continuously update the information supplied to the Commission when there are changes in the facts.

The requirements of this rule are the logical counterpart to other deregulatory proposals to eliminate various reporting and operating requirements. In other words, we propose to eliminate various requirements as to the details of station operation, but we shall expect licensees to oversee such matters on their own, and we shall require that licensees fully inform the Commission as to changes in their facilities.

Paragraph (b) is a result of the proposed deletion of the rule concerning trafficking. As discussed in the explanation of proposed § 22.39, we propose to eliminate all trafficking rules. However, the Commission has a valid interest in ensuring that applications are bona fide and not *solely* for purposes of speculation. We therefore propose to add a rule which specifically states that applicants must intend to provide service to the public.

101. § 22.309 is added:

§ 22.309 Representations.

(a) *Duty of disclosure.* All parties shall make full and continuing disclosure as required by § 1.65 of this chapter. No party shall make misrepresentations of any kind.

(b) *Service to the public.* The filing of an application shall be a representation by the applicant that the motivation for the application is the applicant's intention to provide service to the public.

§ 22.405 Additional application content and § 22.407 [New] Renewal.

Explanation

Present § 22.405 deals with the showings necessary in an application for a developmental authorization and for the renewal of an authorization. We believe short concise sections with descriptive titles are the best; therefore

we propose to create two sections from § 22.405. We propose to relocate § 22.405(b), which discusses renewal of developmental authorizations, to a new § 22.407 "Renewal."

Section 22.405(a) has been restated as § 22.405, "Additional application content." We believe it unnecessary to require that results be achieved within the term of the authorization—normally one year. (*See* § 22.404(a)). We believe present § 22.405(b) (proposed § 22.407) deals adequately with this subject and requires licensees to make good developmental use of the station.

The Commission deleted financial qualifications in § 22.405 (45 FR 63491, Sept. 26, 1980). Our experience has shown that in the case of developmental authorizations, financial qualifications *may* be an important consideration. For example, cellular communications systems, initially authorized on a developmental basis, involve significant initial investment. In CC Docket 79–318, the Commission has adopted a requirement that cellular applicants demonstrate their financial qualifications. We conclude that the financial qualifications of developmental applicants are not always irrelevant.

We do believe that in most instances, the Commission will not need to inquire into financial qualifications. However, financial qualifications may in unusual cases be necessary. We propose to state that the Commission may require a showing of financial qualification for developmental authorizations.

102. § 22.405 is revised:

§ 22.405 Additional application content.

Authorizations for development of a proposed radio service in the public mobile service will be issued only upon a showing that the applicant has a definite program of research and development, which has reasonable promise of substantial contribution to the services authorized by this part. The applicant must make a specific showing as to the factors which the applicant believes qualify him technically to conduct the research and development program, including a description of the nature and extent of engineering facilities which applicant has available for such purpose. The Commission may, in its discretion, require a showing of financial qualification.

103. § 22.407 is added:

§ 22.407 Renewal.

Expiring developmental authorizations may be renewed upon (a) the applicant's compliance with the applicable requirements of § 22.406(a) and (b) relative to the authorization sought to be renewed, and (b) a showing that further progress in the program of research and development requires further radio transmission.

§ 22.501 Nonwireline and miscellaneous common carriers, terminology.

Explanation

This rule uses a "fence" allocation, making frequencies available on an exclusive basis to two separate classes of carriers. The terminology used to describe these carriers is inconsistent and ambiguous. We propose to revise this language in order to clarify the Commission's allocation policy.

Section 22.501 uses differing terminology to refer to (and to allocate frequencies to) carriers other than wireline common carriers (WCCs). Sections 22.501(i) and (k), for example, make frequencies available for use by "miscellaneous common carriers." Other sections of this rule, however, allocate frequencies to those carriers ". . . not also engaged in the business of providing a public landline message telephone service . . ." Although the terminology differs, the rules were intended to refer to the same group.

The question has in the past arisen as to what services are included in the term "public landline message telephone service." Businesses other than the traditional telephone company now provide long distance telephone service. The Commission has taken the position that such entities are not engaged in providing public landline message telephone service. In its *Notice of Inquiry and Proposed Rulemaking in C.C. Docket No. 79–252* (Competitive Carrier Rulemaking), 77 FCC 2d 308 (1979), the Commission distinguished a conventional telephone company from other categories such as specialized common carriers (SCCs). *See also* First Report and Order in the Competitive Carrier Rulemaking, 85 FCC 2d 1 (1980).

The history of the frequency allocations in § 22.501 indicates that the Commission associated the term "wireline common carrier" with local exchange telephone service. In *General Mobile Radio Services*, 13 FCC 1242 (1949), the Commission divided frequencies between two categories of carriers described as "conventional telephone companies" and "miscellaneous common carriers." 13 FCC at 1128. It referred to "enterprises other than existing telephone companies." *Id.* at 1218. The Commission meant that the telephone companies (AT&T and the independent companies) provided "landline public message telephone service." In the 1968 "Guardband" proceeding, the Commission reiterated the distinction between telephone companies and ". . . those entities other than telephone companies." *Report and Order in Docket No. 16778*, 12 FCC 2d 841 (1968); *stay granted* 13 FCC 2d 331 (1968), *recon. denied* 14 FCC 2d 269 (1968), *aff'd. sub nom. Radio Relay Corporation v. F.C.C.*, 409 F. 2d 322 (2d Cir. 1969).

We therefore propose to modify § 22.501 to clarify that the "fence" allocation makes frequencies available to the following two categories: (1) common carriers which provide local exchange telephone service and (2) common carriers which do not provide local exchange telephone service.[4]

We also propose to revise the definition of "miscellaneous common carrier" to eliminate the reference to telegraph service. This definition was drafted when communications consisted of a few clearly defined services, and it was possible to draw a line between telephone and telegraph service on the one hand and general and dispatch mobile service on the other. As stated above, we consider the only meaningful basis for the "fence" allocation is local telephone exchange service. The proposed revision to the definition is consistent with the revisions proposed for § 22.501.

Proposed Rules

[For the text of these proposed revisions, *see* the proposed rules under "§ 22.501, Secondary basis," discussed below.]

§ 22.501 "Secondary basis" paging service.

Explanation

A member of the Mobile Services Advisory Committee suggested that the term "on a secondary basis" be deleted from § 22.501(c).[5] This rule lists frequency pairs in the 152 MHz and 454 MHz bands which are available for assignment to RCCs providing "general dispatch communications," with "signaling communications" permitted on a secondary basis. This term was not

[4] We recognize that the proposed AT&T settlement may raise additional questions as to how AT&T would be classified for purposes of the frequencies allocated under § 22.501. The proposed revisions to this rule are not an attempt to resolve such questions, which cannot be completely disposed of prior to an approved settlement.

[5] This suggestion was elaborated upon in comments submitted by Empire Paging and supporting comments on Zip-Call, Inc. The "secondary basis" language also appears in §§ 22.501 (a) and (b). These sections, however, have not generated the problems discussed above, because they allocate different frequencies to different carriers.

defined in the rule, and no standard was ever established to quantify "secondary basis" service. The proposed amendment would permit paging on an equal basis with two-way communications on these frequencies.

Section 22.501(c) as originally written did not include the "secondary basis" language. Instead, it provided that facilities which provide general or dispatch service over these frequencies may also furnish signaling service. *See Second Report and Order,* Docket No. 11995, 23 Fed. Reg. 1074 (1958). The "secondary basis" language was proposed without discussion in 1969 as part of a general update of the mobile services rules. See *Memorandum Opinion and Order,* (Notice of Proposed Rulemaking), Docket No. 18556, 34 Fed. Reg. 9126 (1969). This proposal was opposed by those members of the industry filing comments, but the Commission adopted the language because "* * * it would be inefficient to permit the use of these frequencies on a co-equal basis. See *Report and Order.* Docket No. 18556, 23 FCC 2d 670 (1970).

Since that time there have been many developments within the industry which could not have been predicted. We now see there has been an enormous demand for paging, and carriers holding licenses for two-way channels have in many cases used the "Secondary basis" language as a basis to meeting this paging demand on the two-way channels. At the same time, however, there is a significant demand for two-way service. The staff receives complaints and inquiries on a frequent basis concerning long waiting lists, typically involving a waiting period of two to three years for radiotelephone service. While it is a reality of the marketplace that paging has grown dramatically, it is also true that the marketplace demonstrates a heavy demand for two-way service (this latter demand is in fact the basis for the cellular proceeding). Today the frequencies allocated in §§ 22.501(c) are heavily used for paging in certain parts of the country. *See* Empire Paging comments. In other regions (notably the oil-producing states such as Texas, New Mexico, Utah, and Wyoming) these frequencies are extensively used for two-way mobile communications. *See* Zip-Call, Inc. comments, p. 5. When the Commission added the "secondary basis" language, it permitted the marketplace to determine what type of mobile service would be provided on these frequencies. This marketplace determination has not been uniform throughout the country but instead has varied according to the needs in various locales. The comments suggest that, although two-way service has far from disappeared on these frequencies, paging has earned the right to co-equal treatment and the rule should be amended to reflect these developments.

These rule sections have been the subject of extensive litigation. Numerous petitions to deny have been filed alleging that carriers providing paging on these frequencies have not done so on a secondary basis but instead have virtually converted these two-way frequencies for one-way use in violation of the "secondary basis" language in the rule. In disposing of such petitions, the Commission has liberally interpreted the rule to permit almost minimal two-way service as compliance with the rule. *See, e.g., Radio Contact Corp.,* 48 RR 2d 1489 (Com. Car. Bur., 1981); *Empire Paging Corp.,* 48 RR 2d 1637 (Com. Car. Bur., 1981); *Beep Communications Systems, Inc., Memorandum Opinion and Order,* Mimeo No. 16536 (released April 19, 1979); *American Communications Systems, Inc., Memorandum Opinion and Order,* Mimeo No. 13003 (released March 5, 1979); *Phone Depots, Inc.,* 28 FCC 2d 405, 21 RR 2d 771 (1971). In spite of the Commission's position on this matter, this language has been a source of continuing litigation. We believe this demonstrates that the language in the rule is not realistic and needs to be revised.

We believe there is merit to the comments submitted on these rules. The "secondary basis" language was an attempt to give some relief to paging customers in the context of a severe frequency shortage. It was not a total solution, and the Commission has taken the longer term approach of making additional frequencies available. In our view, this is the only long term solution to the increasing demand for mobile service except for technological advances such as frequency reuse as in cellular systems. In the meantime we are faced with the particular problems described by the commenters. Paging on these frequencies can hardly be characterized as secondary in many instances. The Commission, in adding this language, intended to preserve spectrum efficiency while at the same time giving carriers additional flexibility.

It was not the Commission's intention to stimulate litigation on the fine points of where to draw the line between primary and secondary service. We do not believe it makes sense to try to preserve a regulatory structure which is not realistic. We therefore propose to revise the rules to state that the frequency pairs listed in § 22.501(c) are allocated for one-way mobile service but may also be used to provide two-way service if there is a public demand for such service.

In so doing, we do not propose to open all mobile service frequencies for both one-way and two-way service. Our proposal here is confined to the unique circumstances related to the situation which has developed in response to the "secondary basis" language in § 22.501(c). We propose simply to recognize the type of use which has evolved on these frequencies and to remove the language which has created artificial and unnecessary problems. We also propose the same modification to §§ 22.501 (a) and (b), which make similar allocations and include the "secondary basis" language.

Zip-Call, Inc. in its comments discusses another problem which is related to the problems discussed above. Although §§ 22.501 (a), (b), and (c) permit paging only on a secondary basis, § 22.501(d)(2) provides that an applicant for a one-way frequency must demonstrate why the proposed one-way service could not be provided on its present two-way frequencies. Zip-Call observes that § 22.501(d)(2) gives equal status treatment to one-way and two-way service while § 22.501 (a), (b), and (c) do not. The applicant is effectively caught between these conflicting standards. We recently addressed this point in Docket No. 80–183 and decided to delete § 22.501(d)(2). Accordingly, the relief sought by Zip-Call has already been granted. *See Report and Order,* FCC 82–202, released May 14, 1982, at paragraph 42.

104. § 22.501 is amended by revising the introductory text preceding paragraph (a) and by revising the introductory test of paragraphs (b) and (c):

§ 22.501 Frequencies.

The following frequencies are available to the Public Land Mobile Service for the use set forth in this section.

* * * * *

(b) For assignment to common carriers which provide local exchange telephone service. These frequencies are available for two-way public land mobile service. One-way public land mobile service may also be furnished, provided that two-way service is offered:

* * * * *

(c) For assignment to common carriers which do not provide local exchange telephone service. These frequencies are available for two-way public land mobile service. One-way public land mobile service may also be furnished,

provided that two-way service is offered:

* * * * *

§ 22.501(e) Bandwidth limitations.

Explanation

This rule section makes available frequencies in the 2 GHz band to common carriers for control of public land mobile stations. The section contains the significant limitation that bandwidth authorized will be "limited to the minimum necessary to serve the purpose required." Pursuant to this limitation, the Mobile Services staff presently limits a 2 GHz microwave authorization to exactly the bandwidth required to handle the current communications needs of the carrier. Through informal comments, Gencan Incorporated (Gencan) has criticized this requirement as imposing substantial administrative burdens on the public and on the Commission's staff without conferring any regulatory benefit. Specifically, Gencan states that, since the 2 GHz authorization is so limited, there is no room for future expansion. As a result, every time a carrier adds another operating channel, the corresponding microwave control authorization must simultaneously be modified to reflect the increase in bandwidth needed to control the new facilities. Gencan observes that in many cases the added channel is at the end of a multi-hop microwave circuit, and several microwave station licenses must be amended.

We believe there is merit to the Gencom comments and propose to eliminate this limitation. When the Commission announced its policy of strictly applying the 2 GHz limitation, it did so in the interest of spectrum conservation. RM-2364, *Memorandum Opinion and Order*, Mimeo 15766, released April 18, 1980. Prior to this announcement, public mobile services licensees were typically authorized 800 kHz for microwave control facilities. We propose to revise the rule so that spectrum conservation is still encouraged but the administrative burdens described above are eliminated. We propose to retain the limiting language in the rule but add language permitting bandwidth authorizations to be made on the basis of the applicant's future growth plans as well as the needs of the instant application. This language will give the staff the flexibility to authorize a bandwidth which is spectrally efficient and which does not necessitate the filing of amendments in the future.

105. § 22.501(e) is revised:

(e) On a shared basis with fixed stations in the Point-to-Point Microwave Radio Service, frequencies in the bands 2110–2130 MHz and 2160–2180 MHz may be authorized for use by control and repeater stations functioning in conjunction with the Public Land Mobile Service. The emission bandwidth shall be limited to the minimum necessary to serve the purpose required, including the applicant's future growth plans. No new assignments will be made in the 2160–2162 MHz for stations located within 50 miles of the coordinates of the sites listed in § 22.901(c), except upon a showing that no alternative frequencies are available. Channel bandwidths in excess of 800 kHz will not be authorized. In each of these bands, the highest frequency which would not cause harmful interference to any other stations shall be assigned.

§ 22.501(f)(1) 72–76 MHz band

Explanation

We propose to rewrite this section in plain language, add a heading, and reorganize the format.

Corrections in terminology have been made to paragraph f(1) which is renamed (f) since (f)(2) has been moved to § 22.103. *See* § 22.103.

The requirement that the repeater station be under the land mobile system's operating personnel is outdated since automated systems need not have any operating personnel. All stations are subject to the requirement that the licensee maintain proper control over the station. We therefore propose to delete the "operational surveillance" language.

106. § 22.501 is amended by revising paragraph (f), introductory text, (f) (1) and (2), and by removing the footnotes from the table:

(f) *72–76 MHz band.* The following frequencies are available for assignment to public land mobile control and repeater stations on a shared basis with certain other radio services. A repeater station normally will not be authorized unless the public land mobile system with which it is associated is continuously open for public correspondence.

* * * * *

(1) Stations existing on December 1, 1961, in the 73.0–74.6 MHz band are not required to protect the radio astronomy service.

(2) Stations operating in this band shall cause no harmful interference to operational fixed stations or reception of television channels 4 or 5 (See § 22.103). Existing stations authorized in the 73 to 74.6 MHz band as of December 1, 1961, may continue to operate, are not required to afford protection to the radio astronomy service and must comply with the following technical specifications:

Frequency Tolerance: .005 percent
Frequency Deviation: ±15 kHz
Authorized Bandwidth: 40 kHz
Modulation Limiter: Required
Audio Low Pass Filter: Not required

§ 22.501(h) Frequencies

Explanation

There is no change of substance. We have updated the language and titled this paragraph.

107. § 22.501(h) is revised:

(h) *150 MHz band (Paging).* The following frequencies may be assigned for use exclusively in providing paging:

(1) Common carriers which do not provide local exchange telephone service: 154.24 MHz, 158.70 MHz.

(2) Common carriers which provide local exchange telephone service: 152.84 MHz, 158.10 MHz.

§ 22.501(i) Frequencies

Explanation

This paragraph has been retitled.

Since present paragraphs (i) and (j) are exactly the same except for the list of frequencies, we propose to combine them.

Proposed paragraph (i) (main part) restates (i), (j) (main parts) and (i)(5), (j)(5). It is unnecessary to explain what a control or repeater station is here, since this is defined in § 22.2 Definitions.

Paragraph (i)(1) restates the frequencies in § 22.501(i), and (i)(2) restates the frequencies in § 22.501(j).

Proposed (i)(3) restates (i) (1), (2) and (j) (1), (2).

Proposed (i)(4) restates the Note to present § 22.501 (i) and (j).

Proposed (i)(5) restates (i)(3) and (j)(3).

Proposed (i)(6) restates (i)(4) and (j)(4).

Paragraph (j) is deleted since it is combined into proposed paragraph (i).

108. § 22.501(i) is revised:

(i) *450 MHz band (control, repeater).* The frequencies in this paragraph may be assigned for use for control stations or repeater stations. Series operation of more than one control or repeater station is not permitted.

(1) These frequencies may be assigned to common carriers which do not provide local exchange telephone service:

* * * * *

(2) These frequencies may be assigned to common carriers which provide local exchange telephone service:

* * * * *

(3) *Location.* The control station and the base station controlled, or the repeater station and the point transmitted to, shall be located 50 miles from the nearest boundary of any urbanized area with a population of 300,000 or more, according to the most recent report of the U.S. Bureau of the Census.

(4) *Waiver of location.* (i) Paragraph (i)(3) of this section may be waived upon a showing that there are frequently pairs in the 152–162 MHz band not assigned or applied for which can provide service to the urbanized area.

(ii) If a waiver is granted, such facilities shall be secondary to the uses permitted by paragraph (c) of this section. Operation shall be terminated within 60 days after notice from the Commission is received that the frequencies are needed for such use.

(5) *Power.* Effective radiated power shall not exceed 150 watts.

(6) *Interference, secondary basis.* The use of the frequencies by a control or repeater station shall not cause harmful interference to any other station authorized to use such frequencies and shall be on a secondary basis to the provision of mobile and rural radio service by other classes of stations.

109. § 22.501(j) is removed and reserved.

§ 22.501(k) Frequencies

Explanation

We propose to title this paragraph and to use the new definitions proposed in § 22.2. There is no change of substance.

110. § 22.501(k), introductory text, is revised:

(k) *470–512 MHz band (Two-Way).* The following frequencies may be assigned to radio common carriers within the listed urban areas:

* * * * *

22.501(n) Waiver of frequency allocation.

Explanation

We are proposing a rule to establish standards for granting waivers to the separate allocations of frequencies to radio common carriers (RCC) and wireline common carriers (WCC). *See* present § 22.501 (b), (c), (i), (j), § 22.601(a). This proposed rule establishes criteria for waiver of the separate allocations and the assignment of a WCC frequency to an RCC, or the assignment of an RCC frequency to a WCC. It significantly liberalizes the Commission's rules by permitting waivers of the separate allocations, since there has been no policy of granting waivers. This waiver policy will not apply to cellular systems as its separate allocation is embodied in the cellular rules, § 22.901.

The proposed rule requires the party requesting the waiver to show there are no available frequencies within the frequency band allocated to WCCs or RCCs, as the case may be. If there are none, then an RCC or WCC frequency may be requested from among any such unassigned frequencies.

Under this proposal, an RCC operating in the 150 MHz band, for example, could apply for an unassigned 150 MHz band wireline frequency, even though there were RCC frequencies unassigned in another band. In other words, a licensee, if it so desired, would have the option of expanding its system in the same frequency band by requesting a waiver of the separate allocation scheme. We emphasize that the channel loading standards found elsewhere in the rules would still apply. The Commission's normal considerations of efficient usage of the spectrum are unaffected by the proposed waiver policy.

The proposed waiver policy applies equally to new entrants to a market as well as to existing carriers. A new RCC entrant, for example, requesting an unassigned wireline frequency in band "A" must show that no RCC frequencies are available in band "A."

We seek additional comment on whether the waiver policy should apply during the 60-day cut-off period after an application is filed; for example, if a wireline carrier requests a particular wireline frequency, should the waiver policy permit an RCC applicant to request the same frequency (within the 60-day cut-off period)?

We are not proposing to eliminate the separate allocation structure. Abolition of the separate allocations involves major policy assessment which is beyond the scope of this proceeding. The proposed rule only permits waivers as to the assignment of presently unused frequencies and would not otherwise change the current distinctions in the rules for RCCs and WCCs. We do, however, intend to undertake a review of the "fence" in a separate proceeding in the near future.

We discuss here several restrictions on the scope of the proposed policy and briefly explain the rationale for these limitations.

The waiver policy would not apply to control and repeater frequencies. A carrier requesting a waiver in order to add another frequency may employ control or repeater frequencies already assigned.

The waiver policy also would not apply to the frequencies allocated in Docket No. 21039. *See* § 22.501(k). All of these frequencies are already applied for, so no unused frequencies are available.

For technical reasons, the waiver policy would not apply in the 150 MHz band. *See* §§ 22.501 (b) and (c). The WCC frequencies allocated in this band have different base and mobile channel separations than those allocated to the RCCs. Because of these differences, a wireline 150 MHz system is in a sense incompatible with a 150 MHz band wireline frequency to its existing facilities. Instead, new facilities would have to be constructed which operate within the separation standards established for those frequencies. The practical effect would not be to provide frequency relief to an existing system but rather to reallocate a frequency for the construction of a new system. This is not the purpose of the proposed waiver policy. As stated above, we will examine the allocation issue in a separate proceeding. Here, we merely propose to add flexibility for spectrum relief in cases where it is technically feasible without eliminating the present allocation structure. We therefore propose to entertain waiver requests only for the guardband frequencies in § 22.501(h), and for the 450 MHz band frequencies listed in §§ 22.501 (b) and (c). We request comment, however, on methods which will add greater flexibility to the waiver policy and which are technically feasible at the same time.

The practical effect of the proposed rule is not very great. It will not affect the larger markets where all frequencies have been assigned, nor will it affect any presently assigned frequencies. The only effect will be in markets where carriers have had nearly fifteen years since the *Guardband* decision [6] to apply for frequencies but have failed to do so. In those cases, we propose to permit waiver requests and thereby make use of unused frequencies.

111. § 22.501(n) is added as follows:

(n) *Waiver of frequency allocation.* (1) Under the conditions stated below, the Commission may grant waivers of the separate allocation in this section and assign to a radio common carrier a frequency allocated to a wireline common carrier, or vice versa.

(2) A request for such a waiver shall show that there are no available frequencies in the same band allocated to the category of common carrier of which the applicant is a member.

[6] *Report and Order in Docket No. 16778,* 12 FCC 2d 841 (1968); stay granted 13 FCC2d 331 (1968), *recon. denied* 14 FCC 2d 269 (1968), *aff'd. sub nom. Radio Relay Corporation v. F.C.C.,* 409 F. 2d 322 (2d Cir. 1969).

(3) The frequency specified in the waiver request shall be selected from among the following categories: the 450 MHz band frequencies listed in §§ 22.501 (b) and (c), and the frequencies listed in § 22.501(h).

§ 22.502 Classification of base stations.

Explanation

This rule classifies base stations according to antenna height. The classification table goes up to 500 feet. The classifications are used as the basis for geographical separation of co-channel stations.

We have rewritten this section in response to GTE's comments which requested clarification of the class of station using antennas higher than 500 feet. We propose to make all such stations Class A, since this is the classification presently used at the upper end of the table. Even though some stations might be Class B, the proposed classification will establish a uniform standard which will be workable in most cases. If an applicant believes a different classification applies, it may request it pursuant to § 22.503(b).

112. § 22.502, except for the table, is revised:

§ 22.502 Classification of base stations

(a) Base stations in the public land mobile service shall be classified according to antenna height above average terrain and effective radiated power in the relevant direction. This classification is not applicable to base stations in the frequency bands 454.6625–455.000 MHz, 459.6625–460.000 MHz, and 470–512 MHz.

* * * * *

(b) Any station with antenna height more than 500 feet above average terrain, shall be considered to be a Class A station.

§ 22.504 Service area of base station.

Explanation

We propose to revise the heading of this rule to conform with changed definitions. The proposed new heading is "reliable service area." We also propose to correct the final sentence in subsection (a) by substituting the term "reliability" in place of "reliably."

Proposed Rule

[See discussion above.]

§ 22.505 Antenna height-power limit

Explanation

This section has been rewritten in plain English. As GTE suggested, we have excluded air-to-ground radio stations from this section because they are limited to 100 watts. Interference and coverage considerations are embodied in the table of allocations, and the path of communications is above the horizon.

113. § 22.505, except for the tables, is revised:

§ 22.505 Antenna height-power limit

(a)(1) Base stations, other than those in the air-to-ground radio service or in the 470–512 MHz band, with antennas more than 500 feet above average terrain shall reduce effective radiated power below 500 watts as provided in the chart below.

(2) More efficient and effective antennas are preferable to high power.

* * * * *

(b) The maximum effective radiated power and antenna height, respectively, for base stations providing one-way signaling service in the frequency band 929–932 MHz shall be no greater than 1 kilowatt (30 dBw) and 305 meters (1000 feet) above average terrain (AAT), or the equivalent thereof determined from the following table:

* * * * *

§ 22.506 Power.

Explanation

We propose to amend this section to conform with our proposals elsewhere. In the discussion to § 22.107 we explained how we are no longer concerned with rated power output but only with effective radiated power. Therefore we have eliminated all references in our proposed rule to rated power output unless there is no effective radiated power specified in the rules.

114. § 22.506 is revised:

§ 22.506 Power

(a) *Base stations.* Base stations shall not exceed 500 watts effective radiated power except for base stations in the 470–512 MHz and 929–932 MHz bands. Base stations in the 470–512 MHz bands shall not exceed the power limits in § 22.501(1).

(b) *Dispatch, auxiliary test stations.* Dispatch and auxiliary test stations shall not exceed 100 watts effective radiated power.

(c) *Mobile stations.* Mobile stations shall not exceed 60 watts transmitter power output.

(d) *Air-ground stations.* Base stations operating on frequencies specified in § 22.521 shall not exceed 100 watts. Airborne mobile stations shall have between 4 and 25 watts rated power output. During idle traffic periods a base station shall continuously radiate on its working channel(s) a modulated carrier reduced in power between 10 and 20 dB below normal power.

(e) *929–932 MHz band.* Base stations operating on frequencies in the band 929–932 MHz shall not exceed the values of effective radiated power listed in § 22.505(b) to a maximum of 1000 watts, and shall not use transmitters having a maximum output power in excess of the limits shown in § 22.107(b).

§ 22.508 Modulation requirements.

Explanation

Section 22.508 is modified to add paragraph (i), which provides additional information for transmitters employing digital emissions.

115. § 22.508 (i) is revised:

§ 22.508 Modulation requirements.

* * * * *

(i) Transmitters complying with the emission limitations of paragraph (b) of § 22.106 shall be exempt from the audio low-pass filter requirements of paragraphs (f) and (g) of this section provided that transmitters used for digital emissions must be type accepted with the specific equipment that provides the digital modulating signal. The type acceptance application shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraph (b) of § 22.106.

* * * * *

§ 22.509 Permissible Communications.

Explanation

We propose to rewrite this section in plain language and reorganize the sections with headings added. Present paragraph (a) has been retained as paragraph (a). Paragraphs (b), (c), and (e)(2), which discuss several types of incidental services, are deleted. Proposed § 22.308 states the general rule concerning incidental services. These paragraphs are the special case. *See* discussion of § 22.308 [proposed]. Present paragraphs (d) and (e)(1) are combined in proposed (b)(2).

Proposed paragraph (b)(4) is derived from paragraph (f). Present paragraph (f) states that base stations may communicate with rural subscriber stations provided this does not "degrade" the public mobile service. Instead of relying on the imprecise term, we propose to refer to the standards set forth in § 22.308 for incidental services. We have also eliminated the reference to § 22.609, since that section is now applicable to all rural radio stations.

Present paragraph (g) (taxi cab operations) has been moved to proposed

(f); present (j) (auxiliary test stations) to (d); present (k) dispatch stations) to (c). These proposed revisions merely reorganize and simplify the present rulles language. We request comment, however, on whether the policy on taxi cab operations and disptach service should be modified. Specifically, should the prohibition on taxi cab service be eliminated and this matter be left to the business judgment of the carrier? Similarly, should the Commission eliminate the policy that a dispatch station operator may communicate only with its own associated mobile units? We question whether these policies are justified for today's mobile services.

Proposed paragraphs (e)(1) and (e)(2) restate present paragraph (h) on Canada-related licensing matters without change of substance. Proposed (e)(1) references § 22.9(e) which states that FCC Form 410 is to be used. Proposed (e)(2) references § 22.9(f), which tells which form is to be used for mobile stations operating in Canada.

Proposed paragraph (e)(3) restates §22.509(i) on trans-border service.

116. §22.509 is revised:

§ 22.509 Permissible Communications.

(a) *Mobile Stations.* Mobile stations shall communicate with and through base stations only. Such communication between base and mobile stations shall be upon frequencies which are paired according to this part.

(b) *Base stations.* Base stations shall communicate only with

(1) land mobile stations;

(2) airborne mobile stations (if 2-way communications, then only as provided in § 22.521);

(3) mobile stations on vessels subject to the requirements for incidental communications services in § 22.308; and

(4) rural subscriber stations subject to the requirements for incidental communications services in § 22.308.

Base stations may broadcast to pagers.

(c) *Dispatch stations.* A dispatch subscriber station may communicate only with that subscriber's mobile stations and only through the associated base station. Where subscribers jointly operate a dispatch station, each subscriber shall communicate only with his own mobile station.

(d) *Auxiliary test stations.* (1) Auxiliary test stations shall be operated on mobile station frequencies for testing fixed receivers remotely located from the control point.

(2) An auxilitary test station may be used as a standby transmitter on the base station's assigned frequency.

(e) *International. (1) Canadian mobile stations.* Canadian licensed mobile stations which are in the United States may communicate with base stations in the public land mobile service after authorization has been granted by the Commission. *See* § 22.9(e).

(2) *United States mobile stations.* United States licensed mobile stations which are in Canada may communicate with base stations in the public land mobile service of either nation upon authorization by Canada.

(3) *Other international.* Unless prohibited by a foreign country, base stations are permitted to provide transborder communication service to mobile stations in that country which are properly licensed for public mobile service in either country.

(f) *Taxi dispatch.* Taxi dispatching is not permitted under this part.

§ 22.510 Base stations part of integrated system.

Explanation

We propose to delete this section. Land mobile stations are no longer licensed, so portions of this section are outdated. The substance of this rule has been placed in § 22.514.

§ 22.510 [Removed and Reserved]

117. § 22.510 is removed and reserved.

§ 22.511 Communication service to own mobile units.

Explanation

This rule establishes reporting requirements which apply to all renewal applicants, concerning use of the base station by the carrier's own mobile units. The purpose of this rule is to ensure that private mobile systems are not licensed as public mobile systems.

We question whether the reporting requirements of this rule are necessary. Carriers licensed to use these frequencies have a strong economic incentive not to limit themselves to "in-house" use. The common practice within the industry has been to maximize service to the public. We believe the administrative burden of this reporting requirement on all renewal applicants is not jusitiable. The Commission has adequate regulatory tools to investigate any such abuses which may occur in the future. Such matters can be brought before the Commission in a petition to deny. We therefore propose to eliminate this rule.

§ 22.511 [Removed and reserved]

118. § 22.511 is removed and reserved.

§ 22.512 Order of service.

Explanation

We propose to delete the elaborate rules presently in § 22.512 regarding priorities of service to customers.

The priority of service rule has not been reviewed or revised since 1949 when § 6.603, the predecessor of § 22.512, was promulgated. When § 22.512's precedessor was enacted, there were good reasons for these priorities. The charges over the last 30 years have made these reasons obsolete. The present rule sets forth a complicated scheme of providing service. Priorities are given to public safety, public service, industrial and related classes. We believe that it is not necesssary for the Commission to burden the regulated industry with the job of classifying subscribers by categories and keeping seven separate lists of prospective customers. The present § 22.512 has been outdated by changes in technology, the allocation of more spectrum and a change in the philosophy of regulation.

In 1949 mobile services were relatively expensive, equipment was bulky, and there were only a handful of available frequencies. Additionally, private land mobile services were not widely available, and many organizations relied upon public land mobile service to meet their mobile communications needs. Today there are frequencies allocated in the Private Radio Services (Part 90) to meet the special needs of the groups which had previously been given priority for service under § 22.512.

Another reason for eliminating the priority listing is that additionally frequencies are becoming available under Part 22. We anticipate that the new cellular technology will greatly reduce or eliminate the waiting lists in the metropolitan areas.

Organizations which are licensed by the Private Radio Bureau also receive service, in many cases, from public land mobile service carriers. We do not propose to change this practice. However, the essential functions of these categories of users can be served by systems licensed under Part 90. We therefore propose to eliminate this rule.

§ 22.512 [Removed and reserved]

119. § 22.512 is removed and reserved.

§ 22.513 Location of message center.

Explanation

The present section requires the placement of the message center within a certain coverage area or the use of a foreign exchange line to a point within

that area. We have received comments suggesting that we permit means other than a foreign exchange line to be used. An example is WATS lines.

We considered proposing a rule that makes no reference to message centers or any other facilities but simply requires that any excess toll charges not be passed on to the customers. We were unable, however, to write a rule to define what the excess charges are. Long distance charges can be defined. However, the advent of local distance charges, or zone unit measure charges, poses a problem. In several metropolitan areas it would be necessary to establish many message centers.

The members of the Mobile Services Advisory Committee expressed the view that the Commission need not adopt a regulatory stance about licensees locating message centers in order to drive up charges. Committee members believed that any carrier who did so would go out of business due to competition.

We agree with the Advisory Committee. While a licensee owned by a wireline company might have an incentive to create excess charges, its nonwireline company competitors would not. In our view, the forces of the market place are adequate to respond to any such problem if it should occur. We therefore propose to eliminate this section as an unnecessary area for federal regulation.

§ 22.513 [Removed and Reserved]

120. § 22.513 is removed and reserved.

§ 22.515 Control points.

Explanation

Many parties suggested revisions to the sections dealing with control points, § 22.515, and § 22.118(d), (e). Section 22.118(d)(2) of the present rules provides that a control point may not be moved beyond the city boundary without prior approval. This rule has been burdensome and has limited licensee flexibility. Several persons filing comments and the Mobile Services Advisory Committee proposed deleting this section. The proposed rule does so. We consider it important that the Commission retain the notification requirement for control points. In cases where the Commission's field staff inspects a station, the staff is interested in the control point, not the business address.

It is not sufficient for the Commission to be informed only of the transmitter location, because in many cases the transmitter is on a mountain top or in another inaccessible location. We therefore believe that notification of control points by letter is the least burdensome means of effecting the Commission's purpose. No application would be required prior to the construction or relocation of a control point.

The Mobile Services Advisory Committee pointed out that many systems now have a computer terminal which monitors the status of transmitters. The requirement in § 22.118(e)(1) that requires a pilot lamp to provide an indication of the transmitter status has been outdated by technology. It requires stations to have a bank of lamps when they are not needed. We propose to adopt this suggestion.

The Committee also suggested that we not require a control point until the station is ready for service since there may be significant delays between filing of the application and the commencement of service. The present rule theoretically requires the applicant to rent an empty room for several years. We have included this suggestion.

We also propose to modify portions of §§ 22.118(d), (e), and 22.515(c), which discuss technical requirements related to control points and dispatch stations. These sections contain facilities-oriented language (on-off control switches, aural monitoring facilities, etc.). We have proposed elsewhere in this notice the general standard that licensees assume the responsibility for proper operation of their station facilities. We therefore consider it unnecessary to specify what control point and dispatch station equipment should be used. Instead, we propose simply to require that every station have at least one control point and that licensees maintain operational control over dispatch stations. We propose to delete the other technical portions of these rules.

Paragraphs (a) and (b) of § 22.515 will be moved to §§ 22.519, 22.520 dealing with dispatch stations.

121. § 22.515 is revised:

§ 22.515 Control points.

(a) *General rule.* (1) Every station in this service shall have at least one control point. Additional control points may be installed upon notification to the Commission.

(2) The Commission shall be notified by letter whenever any control point is moved. Such notification shall contain a street address or its geographic coordinates.

(3) No control point is necessary until the station starts transmitting.

(b) *Dispatch stations.* The licensee shall at all times maintain operational control over each dispatch station.

§ 22.516 Additional showing requirement

Explanation

Section 22.516 has been retitled.

The term "holding time" has been replaced by "channel occupancy time". Holding time is ambiguous. It has been interpreted as the time a message waits before it is completely transmitted, and as the time a station is transmitting messages. The definition used by the Commission is the latter; therefore, we are renaming and defining the term. See § 22.2, "Definitions."

In order to do the blocking studies necessary to determine whether additional channels are justified, we need the channel occupancy time, the number of mobile stations per channel, the number of channels and whether they are trunked. All other requirements in the present rule are unnecessary and will be deleted.

As suggested by the comments of Dean George Hill and the Mobile Services Advisory Committee, we shall require traffic load studies for only the busiest one hour, not for each hour of the busiest 12-hour period. In processing applications, the staff examines only the busiest hour to determine need for additional channels. Since the loading study for the 11 extra hours is not used, it is an unnecessary burden for applicants and should be eliminated.

Finally, we propose that the survey be completed within 60 days prior to the application filing date in order to avoid applictions based on stale factual information.

122. § 22.516 is revised:

§ 22.516 Usage showing for additional channels.

Traffic load studies shall be required in the following cases:

(a) applications which request an additional frequency for an existing one-way signaling station;

(b) applications which request one or more additional frequencies for an existing two-way station;

(c) other applications as the Commission may prescribe.

(1) The study shall survey traffic over the station for the busiest one hour period of the day for three days in a seven day period having normal usage.

(2) The survey shall state (i) the channel occupancy reported separately for each hour; (ii) the number of mobile stations and pagers which are subscribers; (iii) the number of channels and whether they are trunked; and (iv) the date and time of the survey.

(3) The survey shall be performed within 60 days prior to the date on which the application is filed.

§ 22.517 Repeater stations.

Explanation

We propose to rewrite this section in plain English.

It is unnecessary to state that the base station may use only its assigned frequency. It is never permitted to use any other except as provided by these rules or the Commission.

123. § 22.517 is revised:

§ 22.517 Repeater stations.

(a) A base station may be used as a repeater station.

(b) The licensee must be able to turn the base station on or off from the control point regardless of whether a mobile station is transmitting.

22.519 Dispatch stations.

Explanation

We have received comments concerning dispatch stations and related rules. One comment suggested we delete § 22.9(d)(4) which requires prior approval of dispatching agreements. We believe this suggestion has merit. We have no need to review dispatching arrangements if the technical aspects of these rules are complied with. We therefore propose to delete § 22.9(d)(4) as outdated.

We propose to combine § 22.515(a), § 22.519 and § 22.520, since they deal with dispatch stations.

We have not included in the proposed rule cross-references to other sections as found in present § 22.519(a). These references are not informative. They only require that licensees comply with the rules.

Proposed § 22.519(a)(1) restates portions of present § 22.519(a) and § 22.515(a). Proposed § 22.519(a)(2) restates present § 22.520. We propose to delete the following paragraphs: § 22.520(a)(3) (transmitter type—we propose not to require this information for any station); § 22.520(a)(4) (information about antennas—same reason); § 22.520(a)(6) (location of control—we have deregulated this area (see proposed § 22.515)); and § 22.520(a)(9) (commencement of operation—the notification will be filed concurrently with operation or before). We propose to eliminate the requirement of notification of the Engineer-in-Charge, for the reasons given in our discussion of § 22.121.

Since we have a section on discontinuance of operation, § 22.520(c) is redundant and will be deleted.

Posting of authorizations is dealt with in § 22.201 (proposed), so § 22.520(b) is redundant and will be deleted.

Proposed paragraphs (a)(3) and (b) restate the last sentence of § 22.519(a), and § 22.519(b), respectively.

For the reasons given in the discussion of § 22.501(1)(10), we propose to discontinue the practice of specifying a maximum number of dispatch stations on a license.

§ 22.520 [Removed and Reserved]

124. § 22.520 is removed and reserved.

§ 22.9 [Amended]

125. § 22.9(d)(4) is removed and reserved.

126. § 22.519 is revised as follows:

§ 22.519 Dispatch stations.

(a) *Dispatch stations without specific authorization.* A base station licensee may install a dispatch station for mobile station subscriber(s) without specific authorization.

(1) *Technical.* (i) The dispatch station shall use a mobile station frequency paired with the associated base station frequency.

(ii) The antenna height shall not exceed the criteria in § 17.7 of this chapter. The rated power of the transmitter shall not exceed 10 watts.

(iii) No dispatch station shall be capable of overriding the functioning of a control station on the same frequency.

(iv) Every dispatch station shall be under continous supervision of at least one base station control point.

(2) *Notification.* The Commission shall be notified whenever a dispatch station is installed pursuant to this paragraph. The notification shall include the name and address of the subscriber(s) for which the station was installed, the location of the dispatch station, height of antenna structure above ground and above mean sea level, the frequencies used, the call sign of the base station communicated with, and its location.

(3) *Limitation.* The operation of a dispatch station pursuant to notification without specific authorization shall be subject to termination by the Commission without a hearing upon notice to the licensee.

(b) *Dispatch stations requiring authorization.* A dispatch station which does not comply with paragraph (a) of this section shall be installed only after application (on FCC Form 401) and approval.

§ 22.521 Air-ground radiotelephone service.

Explanation

We propose to revise the title of this section to a plain descriptive title. We are combining all sections dealing with this service into this section.

Paragraph (a) restates present § 22.521(a). We have clarified present note 2 to the Table to § 22.521(a) by stating that we are referring to the public land mobile service. Instead of the vague "adversely affect the availability or adequacy of service to airborne subscribers" standard, we have substituted the more definitive standards of proposed new § 22.308 dealing with incidential communications.

Proposed paragraph (b) restates present § 22.521(b). The error in alphabetical order is corrected by placing San Diego ahead of San Francisco in the listing of California cities.

Paragraph (c) restates the parts of § 22.506 dealing with power. Where an effective radiated power is given, no rated power output limitation is needed. *See* § 22.506.

Proposed paragraph (d) restates present § 22.508(h), which discusses ambient noise. We propose to eliminate the reference to a noise cancelling microphone. Our concern is with reduction of ambient noise, not with what type of equipment is used. We therefore propose to delete all language in the rule other than the sentence which sets forth the 95 dB standard.

127. §22.521 (a), (b) introductory text and the entries for California in the table, (c) and (d) are revised:

§ 22.521 Air-ground radiotelephone service.

(a) *Frequencies.* (1) The following frequency pairs, or channels, are allocated for the provision of radiotelephone service between airborne stations and interconnected land mobile radio systems:

Bass station frequencies (MHz)	Working channel designations	Mobile and auxiliary test station frequencies (MHz)
454.675	6	459.700
454.700	7	459.725
454.725	5	459.750
454.750	8	459.775
454.775	4	459.800
454.800	9	459.825
454.825	3	459.850
454.850	10	459.875
454.875	2	459.900
454.900	11	459.925
454.925	1	459.950
454.950	12	459.975
454.975		

These frequencies may be used for public land mobil service subject to the provisions of § 22.308.

(2) Frequency 454.675 MHz is to be associated with each of the base station channels listed above and is to be used exclusively as a signaling channel for calling airborne stations.

(b) *Locations.* Base stations may be assigned the following channels and shall be located with in 25 miles of the coordinates specified, or if none, the main post office:

* * * * *

California:	
East of Fresno (36°44' N. lat) (119°17' W. long.)	3,11
Northwest of Los Angeles (34°20' N. lat.) (118°36' W. long.)	4, 7, 10
North of Redding (40°55' N. lat.) (122°27' W. long.)	6
Northwest of Santa Barbara (34°32'. lat.) (119°58' W. long.)	5
East of San Diego (32°53' N. lat.) (116°25' W. long.)	9
Northeast of San Francisco (37°51' N. lat.) (122°11' W. long.)	1, 8

* * * * *

(c) *Power.* (1) Base stations shall not exceed 100 watts effective radiated power. Airborne mobile stations shall have between 4 and 25 watts rated power output.

(2) During idle traffic periods a base station shall continuously radiate on its working channel a modulated tone reduced in power between 10 and 20 dB.

(d) *Ambient noise.* Ambient noise shall be reduced to 95 dB Reference Acoustical Pressure (flat weighting) or less.

§ 22.524 (new) Auxiliary test stations.

Explanation

The definition for auxiliary test statin (*see* § 22.2) contains substantive rules as to how these stations may be used. We propose to put these substantive regulations into this new section.

It is unnecessary to state, as the present difinition says, that the purpose of the station is to test receivers remote from the base station or receivers not remote from the base station but remote from the control point. It is sufficient to state remote from the control point.

128. § 22.524 is added:

§ 22.524 Auxiliary test stations.

(a) Auxiliary test stations shall be used for testing the performance of fixed receiving equipment remotely located from the control point.

(b) The licensee or permittee of a base station may operate an auxiliary test station.

(c) The auxiliary test station must operate on the mobile station frequency associated with the base station and shall comply with the maximum power specified for mobile stations.

§ 22.600 Deregulation of rural radio service.

Explanation

We propose to eliminate the licensing of certain subscriber stations in an effort to reduce administrative burdens where possible in the rural radio service. This deregulation proposal will apply only to subscriber stations which have an effective radiated power (erp) of no more than 60 watts.[7] Central office stations, interoffice stations, and high-power subscriber stations will be required to obtain licenses. Central office station licenses will include a blanket authorization to serve these unlicensed subscriber stations.

Today rural radio service licensing is administered with a minimum of technical defects in the applications submitted. We believe that licensing of low-power subscriber stations can be treated similarly to the way mobile units are treated and licensing can be eliminated without risk of creating interference problems. We therefore propose to retain the licensing process in the rural radio service only for the other categories of stations listed above. The same technical rules of operation of operation will still apply throughout the rural radio service. All station operators will be required to comply with these rules.

129. § 22.600 is revised:

§ 22.600 Eligibility.

Rural central office and interoffice stations may be licensed to common carriers. Rural subscriber stations may be licensed to common carriers or to the individual user of the service. Subscriber stations which do not exceed sixty (60) watts effective radiated power are not required to obtain a Commission license to operate. Instead, these stations will be associated with the blanket authorization issued to the central office station or base station which serves them. All rural radio stations are required to operate in compliance with Commission regulations and may be required to cease operation for failure to so comply.

[7] Sixty watts is the power limit for land mobile units in other public mobile services covered in Part 22. The Commission has already eliminated the individual licensing requirement for these mobile units. They are considered to be associated with the blanket authorization of the base station which serves them. A similar approach will be used for low-power subscriber stations.

§ 22.601 Frequencies (rural radio).

Explanation

Proposed paragraph § 22.601(a) states the general rule.

Proposed paragraph (b) retates present § 22.601(a). We have broken it down into subparagraphs (1) and (2) for the radio common carriers and wireline common carriers respectively. Paragrapph (b)(3) restates present § 22.601(d).

Present paragraph (c) was deleted in another rulemaking (Docket No. 80–710). We shall relocate presenty paragraph (b) to (c) and add a heading, "890–940 MHz band."

Present paragraph (e) has been retained as (e).

Proposed paragraph (d) is present section (f), concerning the 942–952 MHz band. We propose to add a heading and revise this section in plain language.

130. § 22.601, except for the tables in (b) (1) and (2), is revised:

§ 22.601 Frequencies

(a) *General.* The following frequencies are available on a secondary basis in the rural radio service, provided no harmful interference is caused to stations in the Public Land Mobile Service.

(b) *150, 450 MHz bands.* (1) *Radio common carriers.* The following frequencies will be assigned to radio common carriers for rural subscriber and interoffice stations:

* * * * *

(2) *Wireline common carriers.* The following frequencies will be assigned to wireline common carriers:

* * * * *

(3) *Repeater stations.* The frequencies in paragraphs (1), (2), above, may be assigned for repeater stations upon a showing why it is impracticable to achieve the required communications without repeater stations.

(c) *890–940 MHz band.* New stations will not be authorized in the 890–940 MHz band. However, stations which were authorized to operate on April 16, 1958, may be granted renewed liceses subject to the following conditions:

(1) Operations shall not be protected against any intererence received from the emission of industrial, scientific, and medical equipment operating on 915 MHz or from the emission of radiolocation stations in the 890–942 MHz band.

(2) No harmful interference shall be caused to stations operating in the radiolocation service in the 890–942 MHz band.

(d) *942–952 MHz band.* Existing stations in the 890–942 MHz band may

be authorized to operate in the 942–952 MHz band under the following conditions:

(1) The stations must show that harmful interference is being caused by Government radiopositioning stations in the 890–942 MHz band or by industrial, scientific or medical equipment operating on 915 MHz.

(2) The application must have an engineering study showing that the interference will be eliminated by the change in frequency.

(3) The bandwidth of emission shall not exceed 1100 kHz.

(4) The proposed frequency assignment shall not cause interference to existing operations in the 942–952 MHz band.

(e) *Puerto Rico, Virgin Islands.* In Puerto Rico and the Virgin Islands the 154.04 to 154.46 MHz and 161.40–161.85 MHz bands may be assigned for rural telephone service on a shared basis with International Fixed Public and Aeronautical Fixed Radio services.

§ 22.1008 Priority of service (new).

Explanation

We propose to add a new rule for the offshore radio service, similar to § 22.607 "Priority of service," which applies to the rural radio service. The proposed rule would permit licensees in the offshore radio service to provide private leased line service so long as normal service so long as normal service to the public is not impaired.

131. § 22.1008 is added:

§ 22.1008 Priority of service

Within the Offshore Radio Service, the frequencies set forth in this part are intended primarily for use in rendition of public meesage service between Offishore subscriber and central office stations. However, the frequencies may also be used for the rendition of private leased line communication service provided that such usage will not reduce or impair the extent or quality of communication service which would be available, in the absence of private leased line service, to the general public receiving or subsequently requesting public message service from a central office.

Miscellaneous Corrections

We propose to correct, without extensive discussion, various errors in Part 22 which have come to the staff's attention. Some of these errors are typographical, some cite the wrong rule section or part, and some errors relate to outdated language. We invite additional comment on any other such errors which are not corrected in this notice. We have also made additions or revisions to the rules based on recent rules revisions in the cellular proceeding (CC Docket N. 79–318), the 900 MHz proceeding (CC Docket 80–189), and Docket 20870.

§ 22.5 [Amended]

132. § 22.5(a) is amended by revising the first sentence to read as follows:

(a) Except for an authorization under any of the conditions stated in Section 308(a) of the Communications Act of 1934 [47 U.S.C. § 308(a)], the Commission may grant only upon written application received by it, the following authorization: construction permits; station licenses; modifications of construction permits or licenses; renewals of licenses; transfers and assignments of construction permits or station licenses, or any right thereunder.

* * *

133. The heading of § 22.9 is revised as set forth below:

§ 22.9 Standard application forms for Public Land Mobile, Rural Radio, Domestic Public Cellular Radio Telecommunications, and Offshore Radio Services.

134. § 22.13(c)(1) is revised as follows:

§ 22.13 General application requirements.

(a) * * *

(1) As may be required by these rules; and

* * * * *

§ 22.11 [Amended]

135. § 22.11(b) is amended by deleting ". . . or 435" from the last sentence.

§ 22.15 Technical content of applications.

136. § 22.15(k) is revised and (m) is added to read as follows:

* * * * *

(k) The location of the transmitting antenna shall be considered to be the station location. Applications for stations at specified fixed locations shall describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

(m) In the Domestic Public Cellular Radio Telecommunications Service each application shall contain information described in § 22.913.

137. § 22.20(b)(1), (4), (8) and (10) are revised to read as follows:

* * * * *

(b) * * *

(1) the application is not filled out and signed;

* * * * *

(4) the application does not demonstrate compliance with the special requirements applicable to the radio service involved;

* * * * *

(8) the application is filed after the cutoff date prescribed in § 22.31 of this part;

* * * * *

(10) In the Public Land Mobile Service failure to provide specific answers as required to Items 1, 5, 7, 8, 10, 17, 18, 19, 20, or 26 of FCC Form 401 (answers by cross reference are not acceptable) or failure to propose type accepted equipment (except for developmental applications).

138. § 22.27(c)(5) is removed and reserved. This section does not apply to Part 22.

139. § 22.30(a)(3) is revised to read as follows:

(a) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

§ 22.32 [Amended]

140. § 22.32(b)(5) *applicant's qualification is revised.* This section states that an applicant must be "legally, technically, financial and otherwise qualified." This language is outdated and redundant. We propose to replace it with the simpler standard that applicants must be qualified under current FCC regulations and policies:

* * * * *

(5) the applicant is qualified under current FCC regulations and policies.

141. § 22.32(e) *consideration of applications is amended by adding.* A new subsection (5) referring to cellular applications:

(5) In the Domestic Public Cellular Radio Telecommunications Service the application is entitled to comparative consideration (under § 22.31) with another application (or applications); in such cases the hearing shall conform to the comparative evaluation procedure described in § 22.916.

§ 22.401 [Amended]

142. § 22.401 is amended by redesignating § 22.401(c) as § 22.401(b) and removing paragraph (c).

§§ 22.507, 22.604, 22.508 and 22.521 [Amended]

143. Note 1 to §§ 22.507(b) and 22.604(a) is removed. By the language in the note, it became obsolete in 1971. For

the same reason, the *provided* clause of § 22.508(g) is removed and reserved.

144. § 22.507(c) is removed and reserved. This section discusses bandwidths for frequencies above 512 MHz. The only frequencies above 512 MHz are those in the 2 GHz band, which already have a specified bandwidth limitation of 800 MHz.

145. § 22.521(b). The footnote to Glendive, Montana, should be "3" instead of "8."

Sample Forms

We attach sample forms which incorporate many of the revisions discussed in this notice. We request comment on these draft forms and seek suggestions as to how they may be further simplified, shortened, or consolidated.

BILLING CODE 6712-01-M

D R A F T — FCC FORM 401

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APPLICATION FOR NEW OR MODIFIED COMMON CARRIER RADIO STATION CONSTRUCTION PERMIT UNDER PART 21

ALL ENTRIES THAT ARE ASTERISKED (*) ARE FOR FCC USE ONLY.

FILE NO.* :
PENDING NO.* : : : CP NO.* : : :

1. INDICATE THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER
LEGAL NAME OF APPLICANT (IF PERSON, LIST LAST NAME FIRST.)
: :
CONTINUE NAME HERE IF NEEDED
: :
ASSUMED NAME USED FOR DOING BUSINESS (IF ANY)
: :
CONTINUE ASSUMED NAME HERE IF NEEDED
: :
MAILING STREET ADDRESS OR P. O. BOX
: :
TELEPHONE: AREA CODE - LOCAL NUMBER
: : : : - : : : : : : : :
CITY OR TOWN
: : : : : : : : : : : : : : : : : : : :
STATE — ZIP CODE
: :

2. INDICATE THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER TO CONTACT, IF OTHER THAN APPLICANT.
NAME (LAST NAME FIRST)
: :
CONTINUE NAME HERE IF NEEDED
: :
FIRM OR COMPANY NAME
: :
CONTINUE FIRM OR COMPANY NAME HERE IF NEEDED
: :
MAILING STREET ADDRESS OR P. O. BOX
: :
CITY OR TOWN
: : : : : : : : : : : : : : : : : : : :
STATE — ZIP CODE
: :

3. APPLICATION FOR (CHECK ONLY ONE BOX):
[ ]CONSTRUCTION PERMIT (CP) [ ]MODIFICATION OF CP
[ ]CP AND LICENSE [ ]TEMPORARY AUTHORIZATION
[ ]AMENDMENT OF APPLICATION,
FILE NO. :
[ ]MINOR MODIFICATION [ ]FILL-IN
[ ]ASSIGNMENT OF AUTHORIZATION [ ]MODIFICATION OF LICENSE
[ ]LICENSE RENEWAL [ ]TRANSFER OF CONTROL [ ]REINSTATEMENT

2. DOES THIS APPLICATION REFER TO AN EXISTING STATION?
[ ]YES [ ]NO. IF "YES," GIVE CALL SIGN: : : : : : : : : : :

5. IS THIS A "DEVELOPMENTAL" AUTHORIZATION? [ ]YES [ ]NO
IF "YES," ATTACH NARRATIVE STATEMENT IN SUPPORT OF THE REQUEST.

6. DOES THE APPLICANT REQUEST WAIVER OF ANY STANDARD LICENSE CONDITION OF THE FCC RULES? [ ]YES [ ]NO. IF YES, COMPLETE SCHEDULE M-1.

7. HOW MANY SEPARATE LOCATIONS ARE REQUESTED IN THIS APPLICATION? : : :

8. ARE THERE ANY OTHER APPLICATIONS PENDING WHICH ARE BELIEVED TO BE MUTUALLY EXCLUSIVE WITH THIS APPLICATION? [ ]YES [ ]NO. IF "YES," GIVE CALL SIGNS (CS) (IF AVAILABLE), AND FILE NUMBERS (FN).
CS: : : : : : : : : : FN: :
CS: : : : : : : : : : FN: :

9. IF THIS APPLICATION IS FOR A MODIFICATION OF CP, MODIFICATION OF LICENSE, OR A CP FOR A LICENSED STATION, CHECK THE APPLICABLE BOXES.
[ ]CHANGE FREQUENCY [ ]ADD FREQUENCY [ ]DELETE FREQUENCY
[ ]INCREASE POWER [ ]INCREASE ANTENNA HEIGHT
[ ]CHANGE ANTENNA/TRANSMITTER LOCATION
[ ]CHANGE CONTROL POINT LOCATION
[ ]EXTENSION OF TIME TO COMPLETE CONSTRUCTION

10. CARRIER TYPE: [ ]WIRELINE [ ]RADIO COMMON CARRIER

11. CLASS OF STATION.
[ ]BASE [ ]CONTROL [ ]REPEATER [ ]STANDBY [ ]SIGNALLING
[ ]DISPATCH [ ]AUXILIARY TEST

12. TYPE OF SERVICE.
[ ]ONE-WAY SIGNALLING (PAGING) [ ]TWO-WAY TELEPHONE
[ ]CELLULAR MOBILE [ ]OFFSHORE RADIO

13. ANTENNA LOCATION RECORD.

```
LOCATION NO.* : : :  LATITUDE N. (DEG-MIN-SEC): : : :-: : :-: : :
LONGITUDE W. (DEG-MIN-SEC): : : :-: : :-: : :
STRUCTURE: LOCATION OF STREET: : : : : : : : : : : : : : : : : : : :
(LOC. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
(LOC. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY : : : : : : : : : : : : : : : : : : :
COUNTY : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
ZIP : : : : : : : : : : :
```

14. CONTROL POINTS, INITIAL (I), ADDITIONAL (A), OR DELETED (D)

```
CONTROL POINT NO.* : : :.    I, A, OR D? : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
CONTROL POINT NO.* : : :.    I, A, OR D? : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
```

15. CONTROL POINTS RELOCATED.

```
                              PRESENT.   LOC. NO.* : : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
                              PROPOSED.  LOC. NO.* : : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
                              PRESENT.   LOC. NO.* : : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
                              PROPOSED.  LOC. NO.* : : :
STREET ADDRESS : : : : : : : : : : : : : : : : : : : : : : : : : : :
(ADD. CONT.) : : : : : : : : : : : : : : : : : : : : : : : : : : : :
CITY OR TOWN : : : : : : : : : : : : : : : : : : : :
STATE : : : : : : : : : : : : : : : : : : :
```

16. IN FOLLOWING TABLE MOB-1, MEANING OF SYMBOL HEADINGS IS :

AA - FREQUENCY, IN MHZ.
BB - TRANSMITTER NO.*.
CC - ANTENNA. ALL FREQUENCIES ASSOCIATED WITH EACH ANTENNA ARE TO BE GROUPED TOGETHER. LIST EACH ANTENNA ONCE.
DD - ANTENNA NO.*. EE - EXISTING (E) OR ADDITIONAL (A).
FF - MAKE OF ANTENNA. GG - TYPE NO. OF ANTENNA.
HH - RADIATION PATTERN (DEGREES FROM TRUE NORTH. SPECIFY BEARING(S) IN THE DIRECTION(S) OF MAXIMUM GAIN. MAXIMUM NO. OF BEARINGS TO BE SPECIFIED IS TWO. IF OMNIDIRECTIONAL, SPECIFY 'OMNI.'
II - HEIGHT OF ANTENNA ABOVE GROUND LEVEL, IN FEET.
JJ - MAXIMUM ANTENNA POWER GAIN OVER REFERENCE HALF-WAVE DIPOLE ANTENNA, IN DECIBELS.
KK - MAXIMUM EFFECTIVE RADIATED POWER, IN WATTS.
LL - APPLIES TO BASE STATIONS ONLY. SPECIFY IN ONE OF THE FOLLOWING FOUR CATEGORIES: INITIAL (I). FILL-IN (F). MINOR-MODIFIED (M). OTHER (O).

TABLE MOB-1

		CC								
AA	BB	DD	EE	FF	GG	HH	II	JJ	KK	LL

(FCC USE ONLY)
PUBLIC NOTICE RECORD. PN NARR NO._____. PN CODES: CATEGORY _____

PN NARR._____

17. ANTENNA STRUCTURE STATEMENT AND DESCRIPTION.

IS FAA NOTICIATION REQUIRED? [ ]YES [ ]NO
IF "YES," GIVE DATE OF NOTIFICATION _____,
AND FAA REGIONAL OFFICE WHERE FILED _____.

OVERALL HEIGHTS. HEIGHTS, IN FEET, SHOULD INCLUDE OBSTRUCTION LIGHT, IF REQUIRED, AND ANY OTHER SURMOUNTING APPURTENANCE.

ABOVE GROUND ! ! ! ! ! ! ABOVE MEAN SEA LEVEL ! ! ! ! ! ! !

WILL PROPOSED TRANSMITTING ANTENNA BE SUPPORTED BY THE ANTENNA STRUCTURE OF ANY OTHER RADIO STATION? [ ]YES [ ]NO

DISTANCE, IN FEET, FROM TRANSMITTING ANTENNA STRUCTURE TO NEAREST RUNWAY OF NEAREST AIRCRAFT LANDING AREA ! ! ! ! ! ! !

LIST ANY NATURAL FORMATION OR EXISTING MAN MADE STRUCTURE (HILLS, TREES, WATER TANKS, TOWER, ETC.) WHICH APPLICANT BELIEVES WOULD TEND TO SHIELD THE ANTENNA STRUCTURE FROM AIRCRAFT AND THEREBY MINIMIZE THE AERONAUTICAL HAZARD OF THE ANTENNA STRUCTURE.

IS THE ANTENNA MOUNTED ON AN EXISTING STRUCTURE OR BUILDING WHICH CURRENTLY BEARS LIGHTING AND MARKINGS PRESCRIBED BY FCC RULES PART 17? [ ]YES [ ]NO.
IF "NO," OR IF "YES" BUT THE ANTENNA WILL INCREASE THE HEIGHT OF THE EXISTING STRUCTURE OR BUILDING, DRAW A VERTICAL PROFILE SKETCH OF THE COMPLETE ANTENNA SUPPORT STRUCTURE IN THE SPACE BELOW.

18. HEIGHT AND POWER PARAMETERS ON RADIAL BEARINGS.
IN FOLLOWING TABLE MOB-2, MEANING OF SYMBOL HEADINGS IS:
AA - RADIAL BEARING (DEGREES TRUE)
BB - AVERAGE ELEVATION OF RADIAL (2-10 MI.) IN FEET ABOVE MEAN SEA LEVEL
CC - HEIGHT OF ANTENNA RADIATION CENTER IN FEET ABOVE AVERAGE ELEVATION OF RADIAL (2-10 MILES)
DD - EFFECTIVE RADIATED POWER IN RADIAL DIRECTION, IN WATTS

TABLE MOB-2

AA	BB	CC	DD
0			
45			
90			
135			
180			
225			
270			
315			
[1]			
[1]			
[1]			

AVERAGE TERRAIN ELEVATION, IN FEET _____
ANTENNA RADIATION CENTER HEIGHT IN FEET ABOVE AVERAGE TERRAIN _____
[1] RADIALS IN DIRECTION OF EACH CO-CHANNEL STATION WITHIN 75 MILES. DO NOT INCLUDE IN DETERMINATION OF AVERAGE TERRAIN ELEVATION.
FOR ANY ANTENNA ASSOCIATED WITH A COMMUNICATION SATELLITE EARTH STATION, SHOWN THE MINIMUM ELEVATION PROPOSED TO BE USED: _____DEGREES.

19. LOCATION OF FIXED ANTENNAS RECEIVING SIGNALS OF THE STATION.
CITY OR TOWN _____
COUNTY _____ STATE _____
GEOGRAPHIC COORDINATES (TO BE DETERMINED TO NEAREST SECOND)
DEG/MIN/SEC.
LAT. N. ____-____-____ LONGITUDE W. _____-____-____
LIST FREQUENCIES, CALL LETTERS, AND LOCATION OF STATIONS TO BE RECEIVED REGULARLY BY PROPOSED STATION.

CERTIFICATION OF PERSON RESPONSIBLE FOR PREPARING ENGINEERING INFORMATION SUBMITTED IN THIS APPLICATION

I HEREBY CERTIFY THAT I AM THE TECHNICALLY QUALIFIED PERSON RESPONSIBLE FOR PREPARATION OF THE ENGINEERING INFORMATION CONTAINED IN THIS APPLICATION; THAT I AM FAMILIAR WITH PART 22 OF THE COMMISSION'S RULES; THAT I HAVE EITHER PREPARED OR REVIEWED THE ENGINEERING INFORMATION SUBMITTED IN THIS APPLICATION; AND, THAT IT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

BY_____ _____
(SIGNED) (PRINTED)

ADDRESS:_____
(NUMBER) (STREET)

_____ _____
(CITY) (STATE)

20. APPLICANT IS: (CHECK ONE) [ ]INDIVIDUAL [ ]PARTNERSHIP [ ]UNINCORPORATED ASSOCIATION [ ]CORPORATION

21. IF APPLICANT IS A CORPORATION (INCLUDING JOINT STOCK COMPANIES) OR ASSOCIATION, UNDER LAWS OF WHAT STATE OR COUNTRY IS IT ORGANIZED? _____

22. IS ANY DIRECTOR OR OFFICER AN ALIEN? [ ]YES [ ]NO
IS MORE THAN ONE-FIFTH OF THE CAPITAL STOCK OR MEMBERSHIP INTEREST VOTED BY ALIENS OR THEIR REPRESENTATIVES, OR BY A FOREIGN GOVERNMENT OR REPRESENTATIVE THEREOF, OR BY ANY CORPORATION ORGANIZED UNDER THE LAWS OF A FOREIGN COUNTRY? [ ]YES [ ]NO

23. IS APPLICANT DIRECTLY OR INDIRECTLY CONTROLLED BY ANY OTHER CORPORATION? [ ]YES [ ]NO
(IF "YES," GIVE NAMES AND ADDRESSES OF ALL SUCH CONTROLLING CORPORATIONS INCLUDING ORGANIZATION HAVING FINAL CONTROL.)

24. IS THE APPLICANT DIRECTLY OR INDIRECTLY CONTROLLED BY ANY OTHER CORPORATION OF WHICH ANY OFFICER OR MORE THAN ONE-FOURTH OF THE DIRECTORS ARE ALIENS? [ ]YES [ ]NO
(IF "YES," ATTACH AS EXHIBIT ____ A STATEMENT RELATING THE FACTS)

25. IS MORE THE ONE-FOURTH OF THE CAPITAL STOCK OF ANY CONTROLLING CORPORATION OWNED OF RECORD, OR MAY IT BE VOTED BY ALIENS OR THEIR REPRESENTATIVES, OR BY A FOREIGN GOVERNMENT OR REPRESENTATIVE THEREOF, OR BY ANY CORPORATION ORGANIZED UNDER THE LAWS OF A FOREIGN GOVERNMENT? [ ]YES [ ]NO. (IF "YES," ATTACH AS EXHIBIT _____ A STATMENT RELATING THE FACTS)

26. UNDER THE LAWS OF WHAT STATE OR COUNTRY IS EACH SUCH CONTROLLING CORPORATION ORGANIZED? _____

27. HAS APPLICANT OR ANY PARTY TO THIS APPLICATION HAD ANY FCC STATION LICENSE OR PERMIT REVOKED OR HAD ANY APPLICATION FOR PERMIT, LICENSE OR RENEWAL DENIED BY THIS COMMISSION? [ ]YES [ ]NO. (IF "YES," ATTACH AS EXHIBIT _____ A GIVING CALL SIGN OF LICENSE OR PERMIT REVOKED AND RELATE CIRCUMSTANCES)

28. HAS ANY COURT FINALLY ADJUDGED THE APPLICANT, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE APPLICANT, GUILTY OF UNLAWFULLY MONOPOLIZING OR ATTEMPTING UNLAWFULLY TO MONOPOLIZE RADIO COMMUNICATION, DIRECTLY OR INDIRECTLY, THROUGH CONTROL OF MANUFACTURE OF SALE OF RADIO APPARATUS, EXCLUSIVE TRAFFIC ARRANGEMENT, OR ANY OTHER MEANS OF UNFAIR METHODS OF COMPERITION? [ ]YES [ ]NO
(IF "YES," ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS)

29. HAS THE APPLICANT, OR ANY PARTY TO THIS APPLICATION, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE APPLICANT EVER BEEN CONVICTED OF A FELONY BY ANY STATE OR FEDERAL COURT? YES [ ]. NO [ ]. IF YES, ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS.

30. IS APPLICANT, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE APPLICANT, PRESENTLY A PARTY IN ANY MATTER REFERRED TO IT ITEMS , AND ?
(IF "YES," ATTACH AS EXHIBIT ___ A STATEMENT RELATING THE FACTS)

31. IS APPLICANT DIRECTLY OR INDIRECTLY, THROUGH STOCK OWNERSHIP, CONTRACT, OR OTHERWISE CURRENTLY INTERESTED IN THE OWNERSHIP OF CONTROL OF ANY OTHER RADIO STATIONS LICENSED BY THIS COMMISSION? IF "YES," GIVE:

2. CALL SIGN & SERVICE _____
LOCATION _____
NAME OF LICENSEE _____

33. HAS APPLICANT EVER BEEN DIRECTLY OR INDIRECTLY INTERESTED IN THE OWNERSHIP OR CONTROL OF ANY RADIO STATIONS OTHER THAN THOSE STATED IN ABOVE? IF "YES," GIVE:

CALL SIGN & SERVICE _____
LOCATION _____
NAME OF LICENSEE _____

34. HAS APPLICANT BEEN DENIED STATE CERTIFICATION FOR THE FACILITIES PROPOSED IN THIS APPLICATION.
YES [ ]. NO [ ]. IF YES, ATTACH AS EXHIBIT . A STATEMENT DESCRIBING THE STATE AUTHORITY'S ACTION AND ANY PENDING APPEALS, OR WHETHER THE STATE APPROVAL PROCESS HAS BEEN EXHAUSTED. ATTACH COPIES OF ANY STATE AUTHORITY DECISIONS.

35. ATTACH AS EXHIBIT _____ ANY LOADING STUDY OR NEED SHOWING WHICH IS REQUIRED BY SECTION 22.916 OR OTHER RULES IN PART 22. INCLUDE ALSO ANY OTHER MATERIALS WHICH DEMONSTRATE THAT THE PUBLIC INTEREST WOULD BE SERVED BY A GRANT OF THIS APPLICATION.

36. EXHIBITS AND APPLICABLE SECTIONS AND/OR ITEM NUMBERS OF RULE OR FORM (SEE INSTRUCTION 7)

IN THE FOLLOWING TABLE MOB-3, MEANING OF SYMBOLS IS:
AA - EXHIBIT NO.
BB - SECTION AND/OR ITEM NO. OF RULE OR FORM

TABLE MOB-3

AA	BB	AA	BB	AA	BB

CERTIFICATION

THE APPLICANT WAIVES ANY CLAIM TO THE USE OF ANY PARTICULAR FREQUENCY OR OF THE ETHER AS AGAINST THE REGULATORY POWER OF THE UNITED STATES BECAUSE OF THE PREVIOUS USE OF THE SAME, WHETHER BY LICENSE OR OTHERWISE, AND REQUESTS A CONSTRUCTION PERMIT IN ACCORDANCE WITH THIS APPLICATION. ALL STATEMENTS MADE IN THE ATTACHED EXHIBITS ARE A MATERIAL PART HEREOF AND ARE INCORPORATED HEREIN AS IF SET OUT IN FULL IN THIS APPLICATION.

THE UNDERSIGNED, INDIVIDUALLY AND FOR THE APPLICANT, HEREBY CERTIFIES THAT THE STATEMENTS MADE IN THIS APPLICATION ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF HIS (HER) KNOWLEDGE AND BELIEF, AND ARE MADE IN GOOD FAITH.

DATED THIS_____DAY OF_____,19___.

APPLICANT_____
(MUST CORRESPOND WITH THAT SHOWN ON PAGE 1)

BY_____
(PRINTED)

_____
(SIGNED)

TITLE_____
(POSITION HELD BY PERSON SIGNING FOR APPLICANT)

D R A F T FORM 408

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

NOTIFICATION OF STATUS OF CONSTRUCTION OF FACILITIES
UNDER PART 22 OF F.C.C. RULES

SUBMIT TWO COPIES OF THIS NOTIFICATION DIRECT TO THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D. C. 20554, ATTENTION: MOBILE SERVICES DIVISION.

1. NOTE: THIS NOTIFICATION IS TO BE SUBMITTED:
(a) TO NOTIFY THE COMMISSION THAT FACILITIES HAVE BEEN CONSTRUCTED IN ACCORDANCE WITH THE CONSTRUCTION PERMIT'S SPECIFICATIONS. IF THERE ARE MINOR MODIFICATIONS TO THESE SPECIFICATIONS, THEY ARE TO BE INDICATED ON THIS FORM. THE APPLICANT FILES ONE COPY OF THIS FORM WITH THE FCC AND RETAINS ONE COPY WHICH, ALONG WITH THE CONSTRUCTION PERMIT, CONSTITUTES THE LICENSE;
(b) TO MAKE MINOR MODIFICATIONS TO EXISTING FACILITIES (MAJOR MODIFICATIONS REQUIRE THE FILING OF FORM 401); AND
(c) TO REQUEST AN EXTENSION OF CONSTRUCTION PERMIT. IF SO, CHECK HERE [ ].

2. INDICATE THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER.
LEGAL NAME OF APPLICANT (IF PERSON, LIST LAST NAME FIRST.)
CONTINUE NAME HERE IF NEEDED
ASSUMED NAME USED FOR DOING BUSINESS (IF ANY)
CONTINUE ASSUMED NAME HERE IF NEEDED
MAILING STREET ADDRESS OR P. O. BOX
TELEPHONE : AREA CODE - LOCAL NUMBER
CITY OR TOWN
STATE ZIP CODE

3. INDICATE THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER TO CONTACT, IF OTHER THAN APPLICANT.
NAME (LAST NAME FIRST)
CONTINUE NAME HERE IF NEEDED
FIRM OR COMPANY NAME
CONTINUE FIRM OR COMPANY NAME HERE IF NEEDED
MAILING STREET ADDRESS OR P. O. BOX
CITY OR TOWN
STATE ZIP CODE

4. CLASS OF STATION _____
CALL SIGN
NATURE OF SERVICE _____

5. FILE NO. OF CONSTRUCTION PERMIT OF LICENSE WITH MOST RECENT DATE OF GRANT:

6. IF THIS APPLICATION IS SUBMITTED PER ITEMS 1(a), COMPLETE ITEMS 7 TO 10 AS APPLICABLE.

7. (a) HAS EQUIPMENT BEEN DELIVERED?
YES [ ]. NO [ ]. IF NO, ANSWER THE FOLLOWING:
(b) FROM WHOM ORDERED? (IF NO ORDER HAS BEEN PLACED, SO INDICATE.)
DATE ORDERED _____
DATE DELIVERY PROMISED _____
(c) HAS INSTALLATION COMMENCED?
YES [ ]. NO [ ]. IF YES, SUBMIT AS EXHIBIT _____ A DESCRIPTION OF THE EXTENT OF INSTALLATION AND THE DATE INSTALLATION COMMENCED.
(d) ESTIMATED DATE BY WHICH CONSTRUCTION CAN BE COMPLETED _____

8. IF APPLICATION IS PER ITEM 1(a), SUBMIT AS EXHIBIT _____ REASON(S) WHY CONSTRUCTION HAS NOT BEEN COMPLETED.

9. ARE THE REPRESENTATIONS CONTAINED IN THE APPLICATION FOR CONSTRUCTION PERMIT STILL TRUE AND CORRECT?
YES [ ]. NO [ ]. IF NO, GIVE PARTICULARS IN EXHIBIT _____ .

10. IF THE APPLICATION IS SUBMITTED PER ITEM 1(a), COMPLETE ITEMS 11 TO 21 BELOW.

11. ARE ALL COMPONENTS OF THE FACILITY IN THE THE CONSTRUCTION PERMIT AUTHORIZED BY THE ABOVE FILE NO. CONSTRUCTED AS INDICATED ON THE CONSTRUCTION PERMIT? YES [ ]. NO[ ].

12. IF FOR MODIFICATION OF LICENSE INDICATE PROPOSED CHANGE:

CHANGE IN FREQUENCIES [ ]
CHANGE IN AUTHORIZED POWER [ ]
CHANGE(S) OF CONTROL POINT(S) [ ]
CHANGE IN POINTS OF COMMUNICATION [ ]
CHANGE IN OTHER PARTICULARS [ ]
CHANGES ARE DESCRIBED IN EXHIBIT _____

13. LIST THE OUTSTANDING CONSTRUCTION PERMIT(S), IF ANY, WHICH THIS APPLICATION COVERS:

FILE NO. :
DATE OF GRANT: MO : : : : DATE : : : YR : : : : :
CALL SIGN : : : : : : : : :

FILE NO. :
DATE OF GRANT: MO : : : : DATE : : : YR : : : : :
CALL SIGN : : : : : : : : :

FILE NO. :
DATE OF GRANT: MO : : : : DATE : : : YR : : : : :
CALL SIGN : : : : : : : : :

14. IF LICENSED TRANSMITTERS ARE BEING DELETED, SHOW THE FOLLOWING WITH RESPECT TO SUCH TRANSMITTERS:

LOCATION NO.	TRANSMITTER NO.
____________	______________
____________	______________
____________	______________

15. WHEN WAS THE CONSTRUCTION SPECIFIED IN ITEM 14 COMPLETED?
MO : : : : DATE : : : YR : : : : :

16. IS THE STATION NOW READY FOR OPERATION? YES [ ]. NO [ ].

17. HAVE ALL THE TERMS OF THE CONSTRUCTION PERMIT(S) LISTED IN ITEM 14 BEEN MET? YES [ ]. NO [ ].

18. IF THE ANSWER TO EITHER OR BOTH ITEM 11 AND 12 ABOVE IS 'NO,' THE DISCREPANCIES MUST BE SHOWN IN APPROPRIATE PLACES IN THIS FORM OR LISTED SEPARATELY IN EXHIBITS AND SUBMITTED AS A PART OF THIS FORM. INDICATE THE METHOD OF SUBMISSION BELOW.
NUMBERS OF ITEMS CONTAINING CORRECTED DATA:
____.

IDENTIFICATION OF EXHIBITS CONTAINING CORRECTED DATA:
____.

19. SPECIFY IN THE TABLE ALL PARTICULARS OF OPERATION EXACTLY AS REQUESTED IN THE LICENSE OR MODIFICATION THEREOF.

FREQUENCY IN MHZ	EMISSIONS	DIRECTION (DEGREES FROM TRUE NORTH) OF MAXIMUM RADIATION	EFFECTIVE RADIATED POWER IN WATTS
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________
________	________	________	________

20. LOCATION OF TRANSMITTER:
STREET ADDRESS
: .
CITY OR TOWN
: :
STATE
: :
LOCATION NO. : : : N. LATITUDE (DEG-MIN-SEC): : : :-: : :-: : :
W. LONGITUDE (DEG-MIN-SEC): : : : :-: : :-: : :

21. NOTE ANY ALTERATION IN TRANSMITTER(S) OR ANTENNA SYSTEMS NOT PREVIOUSLY REPORTED TO COMMISSION.

____
____

22. (a) HAVE THERE BEEN ANY CHANGES IN THE DATA FURNISHED IN THE APPLICATION FOR CONSTRUCTION PERMIT COVERING OWNERSHIP, CITIZENSHIP, STATION CONTROL, BUSINESS CONNECTIONS, AND MONOPOLISTIC PRACTICES? YES [ ]. NO [ ].
(b) HAVE SUCH CHANGES BEEN REPORTED TO THE COMMISSION? YES [ ]. NO [ ]. IF NOT, IDENTIFY EXHIBITS ATTACHED HERETO REPORTING CHANGES.
____

23. IF THIS APPLICATION IS FOR MODIFICATION OF LICENSE, STATE WHY THE PROPOSED CHANGE(S) IS (ARE) DEEMED NECESSARY AND THE PURPOSES IT WILL SERVE.

____
____

24. THE APPLICANT HEREBY WAIVES ANY CLAIM TO THE USE OF ANY PARTICULAR FREQUENCY OR OF THE ETHER AS AGAINST THE REGULATORY POWER OF THE UNITED STATES BECAUSE OF THE PREVIOUS USE OF THE SAME, WHETHER BY LICENSE OR OTHERWISE, AND REQUESTS A STATION LICENSE IN ACCORDANCE WITH THIS APPLICATION. ALL ATTACHED EXHIBITS ARE A MATERIAL PART HEREOF AND ARE INCORPORATED HEREIN AS IF SET OUT IN FULL IN THE APPLICATION. ALL THE ANSWERS ON THIS APPLICATION ARE A MATERIAL PART OF THE APPLICATION.

THE APPLICANT REPRESENTS THAT THIS APPLICATION IS NOT FILED FOR THE PURPOSE OF IMPEDING, OBSTRUCTING OR DELAYING DETERMINATION ON ANY OTHER APPLICATION WITH WHICH IT MAY BE IN CONFLICT.

C E R T I F I C A T I O N

I CERTIFY THAT THE STATEMENTS IN THIS APPLICATION ARE TRUE, COMPLETE, AND CORRECT OT THE BEST OF MY KNOWLEDGE AND BELIEF, AND ARE MADE IN GOOD FAITH.

SIGNED AND DATED THIS _____ DAY OF _____, 19_____.

NAME OF APPLICANT (MUST CORRESPOND WITH ITEM 1):

BY (SIGNATURE. DESIGNATE BY CHECKMARK BELOW APPROPRIATE CLASSIFICATION.)

[ ] INDIVIDUAL APPLICANT
[ ] MEMBER OF APPLICANT PARTNERSHIP
[ ] OFFICER OF APPLICANT CORPORATION OF OFFICER AND MEMBER OF APPLICANT ASSOCIATION.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U. S. CODE, TITLE 18 SECTION 1001.

NOTIFICATION TO INDIVIDUALS UNDER PRIVACY ACT OF 1974

THE INFORMATION REQUESTED BY THIS FORM WILL BE USED BY FEDERAL COMMUNICATIONS COMMISSION STAFF TO DETERMINE ELIGIBILITY FOR ISSUING AUTHORIZATIONS IN THE USE OF FREQUENCY SPECTRUM AND TO EFFECT THE PROVISIONS OF REGULATORY RESPONSIBILITIES RENDERED BY COMMISSION BY THE COMMUNICATIONS ACT OF 1934, AS AMENDED. INFORMATION REQUESTED BY THIS FORM WILL BE AVAILABLE TO THE PUBLIC.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P. L. 93-579, DECEMBER 31, 1974.

D R A F T FORM 705

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

APPLICATION FOR ASSIGNMENT OR TRANSFER OF CONTROL

FILE NO. (FCC USE ONLY) _____

NUMBER OF PERMIT OR LICENSE _____
CALL LETTERS _____
CLASS OF SERVICE _____

APPLICABLE PARTS OF THIS APPLICATION MUST BE FULLY EXECUTED ON TYPEWRITER OR INK AND SUBMITTED IN DUPLICATE DIRECT TO THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, WASHINGTON, D. C. 20554. ATTENTION: MOBILE SERVICES DIVISION, IN AMPLE TIME TO BE ACTED UPON BY THE COMMISSION PRIOR TO DATE OF REQUIRED COMPLETION OF CONSTRUCTION PERMIT OR EXPIRATION OF LICENSE.

IF ANY INFORMATION OR DOCUMENTS WHICH ARE ALREADY ON FILE WITH THE COMMISSION ARE REQUIRED TO BE FILED WITH THE APPLICATION, SPECIFIC REFERENCE THERETO (USUALLY BY FILE NO.) MAY BE MADE HEREIN IN LIEU OF REFILING, TOGETHER WITH A STATEMENT THAT THERE HAS BEEN NO CHANGE THEREIN SINCE DATE OF FILING THEREOF.

EACH DOCUMENT OR STATEMENT REQUIRED TO BE FILED AS AN EXHIBIT SHOULD BE NUMBERED CONSECUTIVELY. THE NUMBERS SHOULD BE ENTERED IN THE BLANK SPACES PROVIDED FOR THIS PURPOSE IN THE INDIVIDUAL ITEMS ON THE FORM. WHEN AN EXHIBIT IS NOT REQUIRED, ENTER 'X' IN THE BLANK SPACE.

THIS APPLICATION IS IN TWO PARTS. PARTS ARE TO BE COMPLETED BY PARTIES AS FOLLOWS:

PART	TO BE COMPLETED BY
1	ASSIGNOR/TRANSFEROR
2	ASSIGNEE OR TRANSFEREE (AS APPLICABLE)

IN ADDITION TO THE INFORMATION CALLED FOR BY THIS FORM THE COMMISSION WILL REQUIRE THE FURNISHING OF SUCH ADDITIONAL INFORMATION AS IN ITS JUDGMENT MAY BE NECESSARY FOR ITS CONSIDERATION OF THIS APPLICATION. THE APPLICANT MAY CONSIDER THE APPLICATION TO BE GRANTED 45 DAYS FROM THE PUBLIC NOTICE DATE UNLESS THE COMMISSION OTHERWISE NOTIFIES THE APPLICANT OR A PETITION TO DENY THE APPLICATION IS FILED.

P A R T 1

(TO BE COMPLETED BY ASSIGNOR OR TRANSFEROR (THE PRESENT PERMITTEE OR LICENSEE), WHEREVER THE LEGAL RIGHT TO CONSTRUCT OR TO CONTROL THE USE AND OPERATION OF STATION IS TO BE ASSIGNED OR TRANSFERRED BY VOLUNTARY ACT, AS BY CONTRACT OR OTHER AGREEMENT) OR BY INVOLUNTARY ACT SUCH AS DEATH, LEGAL DISABILITY, BANKRUPTCY, OR OTHER LEGAL PROCEEDINGS.

_____
(DATE)

1. _____
(NAME OR CORPORATE PERMITTEE OR LICENSEE)

_____
ADDRESS (NO. & STREET)

_____
CITY STATE ZIP CODE

2. I HEREBY ASSIGN TO OR TRANSFER CONTROL TO

_____
NAME OF ASSIGNEE OR TRANSFEREE

3. _____
NAME OF TRANSFEROR

_____
ADDRESS (NO. & STREET)

_____
CITY STATE ZIP CODE

SUBJECT TO THE APPROVAL OF THE COMMISSION, THE ASSETS OF OR THE CONTROL OF THE CORPORATION THAT IS LICENSEE OR PERMITTEE OF:

4. _____
(CONSTRUCTION PERMIT NO. OR LICENSE NO.)(CROSS OUT ONE)

DATED _____, GRANTED TO ME TO CONSTRUCT/OPERATE (CROSS OUT ONE) THE TRANSMITTING APPARATUS LOCATED AT

_____
(STREET ADDRESS EXACTLY AS SHOWN ON PERMIT OR LICENSE)

_____
CITY STATE

OR ANY SIMILAR PERMIT/LICENSE SUBSEQUENTLY GRANTED. ASSIGNOR/TRANSFEROR REPRESENTS THAT SAID PERMIT REQUIRED COMPLETION OF CONSTRUCTION OR LICENSE EXPIRES (CROSS OUT ONE) ON

_____
(INSERT THE DATE REQUIRED, OR THE LAST EXTENSION THEREOF GRANTED)

5. TRANSFER OF CONTROL WILL BE ACCOMPLISHED BY;
(CHECK AND FILL OUT ONE ITEM BELOW)

☐SALE OR OTHER TRANSFER OR ASSIGNMENT OF STOCK

	NO. OF SHARES	CLASSIFICATION (COMMON, PREFERRED, ETC.)
SHARES TO BE TRANSFERRED	_____	_____
SHARES ISSUED AND OUTSTANDING	_____	_____
SHARES AUTHORIZED	_____	_____

☐OTHER (e.g., VOTING TRUST AGREEMENT, MANAGEMENT CONTRACT, COURT ORDER, ETC.)

ATTACH AS EXHIBIT _____ A STATEMENT ON HOW CONTROL IS TO BE TRANSFERRED, AND COPIES OF ANY PERTINENT CONTRACTS, AGREEMENTS, INSTRUMENTS, COPIES OF COURT ORDERS, ETC.

CERTIFICATION

THE UNDERSIGNED REPRESENTS THAT STOCK WILL NOT BE DELIVERED, OR THAT THE LICENSE WILL NOT BE ASSIGNED, OR THAT CONTROL WILL NOT BE TRANSFERRED UNTIL THE COMMISSION'S CONSENT HAS BEEN RECEIVED; THAT ALL THE ATTACHED EXHIBITS ARE A MATERIAL PART HEREOF AND ARE INCORPORATED HEREIN AS IF SET OUT IN FULL IN THIS APPLICATION; AND THAT ALL THE STATEMENTS MADE IN PART 1 OF THIS APPLICATION ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF HIS (HER) KNOWLEDGE AND BELIEF.

WILLFUL FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(A)(1))

I REQUEST THAT THE COMMISSION GRANT ITS WRITTEN CONSENT TO THE FOREGOING ASSIGNMENT OR TRANSFER OF CONTROL

_____
(NAME OF ASSIGNOR OR TRANSFEROR)

_____
ADDRESS (NO. & STREET)

_____
CITY STATE ZIP CODE

BY _____
(AUTHORIZED OFFICER OR AGENT [NOTE 1])

_____
(POST OFFICE ADDRESS)

_____

NOTE 1. IF SIGNED BY AN AGENT OTHER THAN THE AUTHORIZED OFFICER OR ASSIGNOR, POWER OF ATTORNEY OR OTHER AUTHORITY OF AGENT OT SIGN MUST BE ATTACHED.

PART 2

(TO BE COMPLETED BY ASSIGNEE, IF THIS APPLICATION IS FOR AN ASSIGNMENT, OR BY TRANSFEREE, IF THIS APPLICATION IS FOR A TRANSFER OF CONTROL.)

IS THIS APPLICATION MADE FOR CONSENT TO VOLUNTARY OR INVOLUNTARY ASSIGNMENT OF PERMIT OR LICENSE? VOLUNTARY [ ]. INVOLUNTARY [ ]. IF INVOLUNTARY, STATE NAME OF PRESENT LICENSEE

CALL LETTERS _____

IF ASSIGNEE HAS OBTAINED THE LEGAL RIGHT TO CONSTRUCT, OR TO CONTROL THE USE AND OPERATION OF STATION AS A RESULT OF INVOLUNTARY ACT OF ASSIGNOR, ASSIGNEE REPRESENTS THAT THERE IS ATTACHED A COPY OF COURT ORDER OR OTHER LEGAL INSTRUMENT BY WHICH ASSIGNEE HAS OBTAINED SUCH RIGHT.

PART 2 IS TO BE COMPLETED BY ASSIGNEE WHO IS TO OBTAIN THE LEGAL RIGHT TO CONSTRUCT OR TO CONTROL THE USE AND OPERATION OF STATION, AS A RESULT OF VOLUNTARY ACT [CONTRACT OR OTHER AGREEMENT], OR INVOLUNTARY ACT [DEATH OR LEGAL DISABILITY] OF GRANTEE OF PERMIT OR LICENSE, OR BY INVOLUNTARY ASSIGNMENT OF THE PHYSICAL PROPERTY CONSTITUTING THE STATION UNDER DECREE OF A COURT IN BANKRUPTCY PROCEEDINGS, OR OTHER COURT ORDER, OR BY OPERATION OF LAW IN ANY OTHER MANNER.

1. NAME OF APPLICANT (NOTE 2) _____

_____

NOTE 2. IF A CORPORATION, STATE CORPORATE NAME; IF A PARTNERSHIP, STATE NAMES OF ALL PARTNERS AND THE NAME UNDER WHICH THE PARTNERSHIP DOES BUSINESS; IF AN UNINCORPORATED ASSOCIATION, STATE THE NAME OF AN EXECUTIVE OFFICER, THE OFFICE HELD BY HIM, AND THE NAME OF THE ASSOCIATION. THE SAME NAME OR NAMES SHOULD BE SIGNED IN THE PLACE PROVIDED AT THE END OF APPLICATION, EXCEPT THAT IN THE CASE OF A PARTNERSHIP THE APPLICATION MAY BE SIGNED IN THE NAME OF THE PARTNERSHIP BY ONE OF THE PARTNERS.

2. POST OFFICE ADDRESS:
STREET AND NUMBER _____
CITY _____ STATE _____
ZIP CODE _____

3. WHAT IS APPLICANT'S PRINCIPAL BUSINESS?

(a) IN WHAT OTHER COMMUNICATIONS BUSINESS OR BUSINESSES IS APPLICANT DIRECTLY OR INDIRECTLY ENGAGED? EXPLAIN FULLY.

(b) IF APPLICANT IS A CORPORATION, IN WHAT OTHER COMMUNICATIONS BUSINESS OR BUSINESSES ARE THE OFFICERS, DIRECTORS, OR PRINCIPAL STOCKHOLDERS DIRECTLY OR INDIRECTLY ENGAGED? EXPLAIN FULLY. (ATTACH ADDITIONAL SHEETS, IF NECESSARY.)

4. IS APPLICANT A CITIZEN OF THE UNITED STATES? YES [ ]. NO [ ].

5. IS APPLICANT A REPRESENTATIVE OF AN ALIEN OR OF A FOREIGN GOVERNMENT? YES [ ]. NO [ ].

6. IF APPLICANT IS A CORPORATION --

(a) UNDER LAWS OF WHAT STATE OR COUNTRY IS IT ORGANIZED? _____.

(b) IS MORE THAN ONE-FIFTH OF CAPITAL STOCK OWNED OF RECORD OR MAY IT BE VOTED BY ALIENS OR THEIR REPRESENTATIVES OR BY A FOREIGN GOVERNMENT OR REPRESENTATIVE THEREOF, OR BY ANY CORPORATION ORGANIZED UNDER THE LAWS OF A FOREIGN COUNTRY? YES [ ]. NO [ ].

(c) IS ANY DIRECTOR OR OFFICER AN ALIEN? YES [ ]. NO [ ]. IF YES, STATE NAME AND POSITION OF EACH _____

(d) GIVE NAMES AND ADDRESSES OF ALL STOCKHOLDERS OWNING AND/OR VOTING 10 PERCENT OR MORE OF ASSIGNEE'S STOCK AND PERCENTAGE OF STOCK HELD BY EACH _____

7. IF APPLICANT IS A CORPORATION, IS APPLICANT DIRECTLY OR INDIRECTLY CONTROLLED BY ANY OTHER CORPORATION? YES [ ]. NO [ ].
(a) IF YES, GIVE NAME AND ADDRESS OF SUCH CONTROLLING CORPORATION? _____
_____
(b) UNDER LAWS OF WHAT STATE OR COUNTRY IS SUCH CORPORATION ORGANIZED? _____
(c) IS MORE THAN ONE-FOURTH OF CAPITAL STOCK OF SUCH CORPORATION OWNED OF RECORD OR MAY IT BE VOTED BY ALIENS, THEIR REPRESENTATIVES, OR BY A FOREIGN GOVERNMENT OR REPRESENATIVE THEREOF, OR BY ANY CORPORATION ORGANIZED UNDER THE LAWS OF A FOREIGN COUNTRY? YES [ ]. NO [ ].
(d) IS ANY DIRECTOR OR OFFICER OF SUCH CORPORATION AN ALIEN? YES [ ]. NO [ ].
IF YES, STATE NAME AND POSITION OF EACH
_____
(e) IS THE ABOVE-DESCRIBED CONTROLLING CORPORATION IN TURN A SUBSIDIARY? YES [ ]. NO [ ].
IF YES, ATTACH AS EXHIBIT _____ RESPONSE TO QUESTION 8(a) TO 8(d), INCLUSIVE, FOR EACH COMPANY UP TO AND INCLUDING THE ORGANIZATION

8. IF APPLICATION IS MADE IN BEHALF OF AN UNINCORPORATED ASSOCIATION, STATE --
(a) PURPOSE OF THE ASSOCIATION _____
_____
(b) THE NUMBER OF MEMBERS _____
(c) WHETHER ANY MEMBERS ARE ALIENS.
YES [ ]. NO [ ]. IF YES, STATE NAME AND POSITION OF EACH _____
_____

9. IN THE CASE OF ASSIGNEES:
STATE APPLICANT'S RELATION TO STATION (WHETHER APPLICANT IS TO BE OWNER OR LESSEE, AND, IF NEITHER OWNER OR LESSEE, STATE NATURE OF APPLICANT'S INTEREST IN USE AND CONTROL OF STATION [NOTE 3]) _____
_____
NOTE 3. IF NOT OWNER, A COPY OF AGREEMENT SHOWING ASSIGNEE'S INTEREST IN STATION MUST BE ATTACHED IF NOT HERETOFORE FILED WITH COMMISSION.
(b) IF ASSIGNEE IS NOT TO BE OWNER OF STATION, WHO IS?_____
_____

10. (a) HAS THE APPLICANT BEEN FINALLY ADJUDGED GUILTY BY ANY FEDERAL COURT OF UNLAWFULLY MONOPOLIZING, OR ATTEMPTING UNLAWFULLY TO MONOPOLIZE, RADIO COMMUNICATION DIRECTLY OR INDIRECTLY THROUGH CONTROL OF MANUFACTURE OR SALE OF RADIO APPARATUS, EXCLUSIVE TRAFFIC ARRANGEMENTS, OR ANY OTHER MEANS, OR OF UNFAIR METHODS OF COMPETITION? YES [ ]. NO [ ].
(b) IS APPLICANT DIRECTLY OR INDIRECTLY CONTROLLED BY ANY PARTY FINALLY ADJUDGED GUILTY AS ABOVE STATED? YES [ ]. NO [ ].

11. IS THE APPLICANT DIRECTLY OR INDIRECTLY INTERESTED IN OR AFFILIATED WITH ANY ENTITY OR PERSON ENGAGED IN THE BUSINESS OF PROVIDING A PUBLIC LAND LINE MESSAGE TELEPHONE SERVICE: YES []. NO []. IF YES AND THE APPLICANT IS NOT A LAND LINE TELEPHONE CARRIER, ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS.

12. HAS THE APPLICANT OR ANY PARTY TO THIS APPLICATION HAD ANY STATION LICENSE OR PERMIT REVOKED OR HAD ANY APPLICATION FOR CONSTRUCTION PERMIT, LICENSE, OR RENEWAL DENIED BY THIS COMMISSION? YES[]. NO []. IF YES, ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS.

13. HAS THE APPLICANT, OR ANY PARTY TO THIS APPLICATION, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE APPLICANT EVER BEEN CONVICTED OF A FELONY BY ANY STATE OR FEDERAL COURT? YES []. NO []. IF YES, ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS.

14. IS THE APPLICANT, OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING THE APPLICANT, PRESENTLY A PARTY IN ANY MATTER REFERRED TO IN ITEMS 11, 12,13? YES []. NO []. IF YES ATTACH AS EXHIBIT _____ A STATEMENT RELATING THE FACTS.

15. DOES TRANSFEREE NOW HOLD ANY OBLIGATIONS OF LICENSEE CORPORATION? YES []. NO []. IF YES, IN EXHIBIT _____ DESCRIBE THE OBLIGATIONS, METHODS BY WHICH ACQUIRED, AND THE DATES ON WHICH THEY WERE OBTAINED.

16. DOES LOCAL OR STATE LAW REQUIRE ANY AUTHORIZATION TO TRANSFER THE CONTROL OF THE FACILITIES AND/OR OPERATIONS INVOLVED HEREIN? YES[]. NO [].

17. THE APPLICANT WAIVES ANY CLAIM TO THE USE OF ANY PARTICULAR FREQUENCY OR OF THE ETHER AS AGAINST THE REGULATORY POWER OF THE UNITED STATES BECAUSE OF THE PREVIOUS USE OF THE SAME, WHETHER BY LICENSE OR OTHERWISE, AND REQUESTS THAT WRITTEN CONSENT BE GRANTED TO ASSIGN THE CONSTRUCTION PERMIT OR LICENSE HEREIN MENTIONED TO HIM.

18. THE ASSIGNEE ASSUMES ALL THE OBLIGATIONS AND AGREES TO ABIDE BY ALL THE CONDITIONS IMPOSED UPON THE ASSIGNOR UNDER THE SUBJECT CONSTRUCTION PERMIT OR LICENSE EXCEPT THAT HE SHALL NOT BE LIABLE FOR ANY ACT DONE BY, OR ANY RIGHT ACCRUED OR ANY SUIT OR PROCEEDING HAD OR COMMENCED AGAINST, THE ASSIGNOR PRIOR TO SAID ASSIGNMENT.

CERTIFICATION

I CERTIFY THAT THE STATEMENTS IN PART 2 ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT, U. S. CODE, TITLE 18, SECTION 1001

SIGNED AND DATED THIS _____ DATE OF _____, 19___

_____
NAME OF APPLICANT (MUST CORRESPOND WITH ITEM 1, PART 2)

BY _____
SIGNATURE (DESIGNATE APPROPRIATE CLASSIFICATION BELOW)
[ ] INDIVIDUAL APPLICANT
[ ] MEMBER OF APPLICANT PARTNERSHIP
[ ] OFFICER OF APPLICANT CORPORATION OR ASSOCIATION

NOTICE TO INDIVIDUALS REQUIRED BY PRIVACY ACT OF 1974

SECTIONS 301, 303, AND 308 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED (LICENSING POWERS) AUTHORIZED THE FCC TO REQUEST THE INFORMATION ON THIS APPLICATION. THE PURPOSE OF THE INFORMATION IS TO DETERMINE YOUR ELIGIBILITY FOR A LICENSE. THE INFORMATION WILL BE USED BY FCC STAFF TO EVALUATE THE APPLICATION, TO DETERMINE STATION LOCATION, TO PROVIDE INFORMATION FOR ENFORCEMENT AND RULEMAKING PROCEEDINGS AND TO MAINTAIN A CURRENT INVENTORY OF LICENSEES. NO AUTHORIZATION CAN BE GRANTED UNLESS ALL INFORMATION REQUESTED IS PROVIDED.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Community Development Block Grants

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-82-1005]

Community Development Block Grants

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends regulations governing the Community Development Block Grant (CDBG) program to reflect changes made in the Housing and Community Development Act of 1974 by the Housing and Community Development Act of 1980 (Pub. L. 96-399) and the Housing and Community Development Amendments of 1981 (Pub. L. 97-35). These legislative amendments and this interim rule provide grantees greater flexibility in administering this CDBG program. In the Entitlement Program the application requirement is being replaced by a requirement that the grantee prepare a statement of community development objectives and projected use of funds, together with a series of certifications. The overall thrust of these regulations is to eliminate unnecessary requirements that exceed statutory intent while ensuring that the public interest is protected through the establishment of generally acceptable standards of accountability for grantee performance.

DATES: Effective Date: Upon expiration of the first period of 30 calender days of continuous session of Congress after publication, subject to waiver, and subject to OMB approval of the information collection requirement contained in § 570.306 which is currently under review. Further notice of the effective date of § 570.306 and the rest of this rule will be published in the **Federal Register.**

Comment Due Date: December 3, 1982.

ADDRESS: Comments should be sent to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Office of Block Grant Assistance, Department of HUD, 451 Seventh Street, S.W. Washington, D.C. 20410, (202) 755-9267. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development (HCD) Amendments of 1981, comprising Title III, Subtitle A, of the Omnibus Reconciliation Act of 1981, effected major changes in the Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act). A principal objective of the amendments, which were derived in major part from Administration proposals, was "to 'deregulate' programs * * * where Federal regulatory intrusion has unnecessarily encumbered the process of receiving Federal funds without a concomitant contribution to program quality * * * Our intent is to greatly reduce burgeoning administrative hurdles forced in the path of local governments seeking 'entitlement' community development grants. In so doing, it is our purpose to lessen significantly this improper Federal intervention in the local decision making process." Senate Report No. 97-87 at 2.

One major change made was in the structure of the CDBG program for smaller communities. Since its inception in 1974, the program had provided for formula grants on an entitlement basis for metropolitan cities and urban counties, and for discretionary grants to units of general local government outside such areas (i.e., "nonentitlement areas"). In a fundamental change to transfer power and decisionmaking to States, the 1981 amendments granted to States the option to administer the block grant funds for nonentitlement areas within their borders.

A further central change was the deletion of the application process for entitlement grantees (metropolitan cities and urban counties) and States administering nonentitlement grants as a means of reducing Federal administrative intrusion. A key element in deletion of the front-end application process was reliance upon the back-end review process already provided for in the statute. As emphasized in the Senate report:

> We are * * * convinced that the integrity of the program will be protected by the present and proposed requirements for performance review as opposed to application review. In recent years, the Department of Housing and Urban Development's interpretation of the Act has placed too much emphasis on application review. The HUD regional and area office staff has used the application process far too frequently as a means for imposing HUD's view of acceptable program activity on local entities. The Committee's proposal reemphasizes the post grant review and audit process as the proper point in time to determine consistency and appropriateness of local CD programs. Senate Report No. 97-87 at 3.

Simplification and deregulation of the Community Development Block Grant program has also been an administrative priority of the Administration. The Presidential Task Force on Regulatory Relief, chaired by Vice President Bush, designated the Department's CDBG regulations for review pursuant to Executive Order 12291. In its announcement concerning this review, the Task Force commented:

> These rules establish eligibility, application, administrative requirements, and performance standards for small cities that compete for Federal financial assistance, and for larger "entitlement" cities that receive financial assistance on the basis of statutory formulae. These requirements may unnecessarily diminish local flexibility and impose excessive administrative and compliance costs. For example, one community was denied funding for projects to promote the safety and welfare of its neighborhoods; instead, the funding had to go to water and sewer projects.

This publication represents a further stage in the Department's implementation of statutory changes to CDBG programs effected by the 1981 amendments as welll as the HCD Act of 1980 and simplification of administrative requirements. Previously the Department published, as final rules, a revision of 24 CFR Part 570, Subpart G, covering the Urban Development Action Grants made under section 119 of the Act (47 FR 7982) (February 23, 1982) and a new Subpart I, covering the State's Program for nonentitlement areas in State's (47 FR 15290) (April 8, 1982). On August 16, 1982 the Department published, as an interim rule, a revision of Subpart F, covering the HUD-Administered Small Cities Program for nonentitlement areas in States which do not elect to administer grants for such areas (47 FR 35674). On April 12, 1982, the Department published, as an interim rule, a revision of 24 CFR Part 58, containing environmental review procedures for all CDBG programs.

This publication contains a revision of several interrelated subparts of 24 CFR Part 570, including Subpart D, covering the Entitlement Program. Additional subparts revised by this interim rule are Subparts A—General Provisions; C—Eligible Activities; K—Other Program Requirements; and M—Loan Guarantees. A new provision is added to Subpart O; further revisions of Subpart O are expected to be published in the near future.

Several structural changes in the regulations flow from basic program changes, particularly elimination of the application process. Provisions for determination of whether a grantee's program complies with the primary objectives of the Act through each

activity addressing one of the broad national objectives cited in section 104(b)(3) of the Act, currently contained in Subpart D, are set forth as performance review standards in Subpart O. The extensive list of certifications by the grantee formerly contained in the application is being reduced substantially to those required by the statute. The resulting elimination of specific reference to "other applicable law" in the regulatory provisions describing the certifications has required a fuller treatment of such cross-cutting requirements in Subpart K.

Subpart A—General Provisions

Subpart A is being substantially revised to reflect the 1980 and 1981 amendments to the HCD Act of 1974; to delete obsolete and redundant provisions; to clarify other provisions; and to add information concerning the allocation of funds which is currently included in Subpart B.

The following changes are being made to Subpart A.

Purpose

This section is being retitled and revised to specify the programs covered by the policies and procedures described in Part 570, and to delete the listing of programs consolidated by the Act in 1974. Clarification of the relationship of various Subparts to the State's program is being added.

Primary Objective

This section is being retitled to reflect the fact that the detailed program objectives are being deleted. They were eliminated because they were simply a verbatim repetition of sections 101(c) and (d) of the Act. The primary objective is being retained because of its primacy and since it is referenced in other Subparts.

Definitions

The following changes are being made in the definitions:

"Basic grant amount" is being replaced by a revised definition of "Entitlement amount (§ 570.2(g)) for purposes of clarity.

"Community Development Program", "Hold-Harmless amount" and "Hold-Harmless grant" are now obsolete and are being deleted.

"Nonentitlement amount" (§ 570.2(r)) and "Nonentitlement area" (§ 570.2(s)) are being added to reflect the new allocation procedures in the 1981 legislative amendments which now allocate Title I funds between entitlement and nonentitlement areas.

"Discretionary grant" (§ 570.2(f)) is being changed so that it now refers exclusively to grants made from the Secretary's Fund, and clearly distinguishes them from grants made under the Small Cities program.

"Age of housing" (§ 570.2(b)) and "Extent of housing overcrowding" (§ 570.2(i)) are being modified to indicate that 1980 census data will not be used until Federal Fiscal Year (FFY) 1984, as provided by the 1980 legislative amendments.

"Low and moderate income" (also called "lower income") is being modified somewhat. The current definition is based principally on the 80 percent of median income standard established for housing programs in Title II of the Act. The definition in this rule is being modified to more closely follow the language as set forth in Title II. Beginning with grants made from FFY 1983 appropriations and until further notice, the Department will use the income limits established for Section 8 rental subsidy eligibility purposes in determining whether a household is considered to be of low and moderate income for the CDBG Entitlement and HUD-run Small Cities programs. For direct benefit activities, the determination will be made based on the size of family or household being served. Where income levels are known for households in general for a particular geographical area, but not for individual households, the Section 8 limit for a four-person household shall be used as the limit applicable to all households in that area, except that the income limit for a one-person household shall be used for unrelated individuals.

While CDBG definition currently relies on Section 8 limits with respect to persons receiving a *direct* benefit from a CDBG assisted activity, for some communities CDBG uses 80 percent of median income based on a *different area* than used for Section 8 eligibility when measuring benefit for CDBG activities covering a neighborhood or other area. The difference is especially great for nonmetropolitan communities. The following shows a comparison of the areas for which median income is used for Section 8 eligibility and that which is currently used for CDBG area benefit activities:

Community	Area used for section 8 eligibility	Area currently used for CDBG areawide determinations
Located in a metropolitan area	The median of the metropolitan area or of the applicable multi-State census region, whichever is greater.	The metropolitan area.
Nonmetropolitan	The median of the Nonmetropolitan county or of the applicable multi-State census region, whichever is greater.	Nonmetropolitan area of the State.

The net effect of strictly using the Section 8 limits will be that there will be closer conformance between the number of households qualifying for Section 8 assistance and those considered as low and moderate income for purposes of measuring compliance with the CDBG primary objective.

In connection with its recent publication of regulations at Part 570, Subpart I, governing the State's Program for nonentitlement areas (47 FR 15290) (April 8, 1982), the Department recounted the history of its regulatory equation of the statutory term "low and moderate income families" appearing in the Act with the income threshold for "lower income families" appearing in the Act with the income threshold for "lower income families" established for the section 8 program. The Department established a somewhat more flexible standard for State definition of "low and moderate income families" for purposes of the State's Program, but indicated at that time that "for purposes of its administration of the entitlement and HUD-administered nonentitlement programs [the Department] does not plan at this time to depart from its historic practice of utilizing the 80 percent of median standard." Adherence to this historic standard is reflected in the interim rule published herewith. However, the Department also repeats its concern earlier expressed that "an equation of 'low and moderate income' with an income level specifically established as 'lower income' can unduly restrict the availability of program benefits to persons properly regarded as moderate income" (47 FR 15293). The Department specifically invites comment as to whether the experience of Entitlement grantees and others has indicated a need for reexamination or revision of this standard.

"Metropolitan city" (§ 570.2(p)) is being modified to provide that an area which is being classified as a metropolitan area based on criteria in effect as of December 31, 1979 will continue to be so classified through Federal Fiscal Year 1983 if it continues to meet such criteria. This revision reflects a provision in the 1980 legislative amendments.

"Metropolitan city" (§ 570.2(q)) is being modified to provide that any city currently in a metropolitan area which was classified as a central city as of December 31, 1979 will continue to be so classified through Federal Fiscal Year 1983, and to provide that any city which is being classified as a metropolitan city because it has a population of at least fifty thousand (50,000) will continue to be so classified through Federal Fiscal Year 1982. This provision is based on 1980 and 1981 legislative amendments.

"Urban county" (§ 570.2(x)) is being revised to reflect the new three year urban county qualification process authorized by the 1980 legislative amendments.

"Urban Development Action Grant" (§ 570.3(y)) is being modified to conform with new language in the 1981 legislative amendments.

Allocation and distribution of funds

This section replaces the material currently included in Subpart B. It is much shorter than the superseded Subpart B, however, because it references, rather than repeats, the information in sections 106 and 107 of the Act. That information is not repeated in the regulations because the allocation and distribution of funds are processes performed by HUD which require no actions by grantees. Only supplemental information on the allocation and distribution of funds is included in this section, dealing primarily with the sources of data which HUD will use in making the required calculations.

Waivers

The section on waivers is being moved from § 570.4 to § 570.5 and revised to allow the Secretary to waive any requirement in Part 570 not required by law whenever it is determined that either undue hardship will result from applying the requirement or where application of the requirement would adversely affect the purposes of the Act. Currently, a waiver can be made only where both conditions existed.

Subpart B [Reserved]

The information currently contained in Subpart B will be covered in Subpart A at § 570.4, Allocation and distribution of funds. Subpart B is therefore being reserved at this time.

Subpart C—Eligible Activities

General

Revisions to Subpart C are being made to conform the regulations to the changes included in the HCD Act of 1980 and the HCD Amendments of 1981 included in the Omnibus Budget Reconciliation Act of 1981. In addition, the entire subpart is being edited to achieve the Department's deregulation objectives and to improve clarity.

As part of the deregulation effort, all current requirements for prior HUD approval of specific activities are being deleted (except for the use of CDBG funds for the demolition of HUD assisted housing). In place of the prior approval process, the new paragraph § 570.200(e) establishes a simplified procedure which only requires a written determination by the recipient. The statute requires a determination be made to make the following activities eligible: special economic development activities, special activities by subrecipients, and relocation costs other than those mandated by the Uniform Relocation Act. To aid in the prevention of waste and misuse of CDBG funds, this paragraph also requires a written determination prior to using CDBG funds for interim assistance, loans for refinancing existing indebtedness secured by a property being rehabilitated, and preparation of applications for Federal programs (other than CDBG or UDAG). Under these rules, HUD will accept a recipient's determination for this purpose. Documentation of such determination must be maintained in the recipient's records and be available for review by HUD or other authorized auditors.

To shorten the regulation, a number of examples are being deleted. Since the examples merely illustrated the practical implications of eligibility provisions, these deletions do not reduce the scope of eligible activities. Other general changes include the use of the term "recipient" instead of "applicant" because the statute has deleted the requirement for an application. The addition of "community development" to the term "block grant" now seems necessary since there are a number of block grant programs.

General policies

A provision is being added to make clear that for grants made under the Entitlement or HUD-administered Small Cities program, each assisted activity must address one of the broad national objectives in order to be in accordance with the primary objectives of the Act.

The regulation governing special assessments is being completely revised to eliminate overly restrictive provisions. When CDBG funds are used to pay a portion of the capital cost of an eligible public improvement, special assessments may now be levied to recover any portion of the cost of the improvement funded from sources other than CDBG funds. However, the special exception permitting the locality to levy an assessment to recover costs initially paid with CDBG funds is being deleted since the practical effect was to use CDBG funds for interim financing rather than to leverage private investment. Private investment can be stimulated by limiting CDBG funds to a portion of the total cost with funds from the property owners paying all or part of the remainder through assessments. CDBG funds may also be used to pay special assessments levied against properties owned and occupied by low and moderate income households in connection with eligible public improvements, thus facilitating the provision of CDBG assistance to lower income households not residing in predominantly lower income areas of the community.

The provisions concerning public facilities on school property are being deleted. Schools and other educational facilities are considered public facilities under the HCD Amendments of 1981. The provisions for eligible public facilities occupying portions of multiple use buildings remain the same, however.

Paragraph § 570.200(f) describes the various ways the recipient may carry out eligible activities. This incorporates provisions currently included in § 570.201(e) and § 570.204(b).

Paragraph (h) describes allowable reimbursement for costs incurred by the recipient prior to the effective date of the grant agreement. This incorporates essentially the same information currently included in § 570.301(e).

The provision concerning the authority to use Urban Development Action Grant (UDAG) funds for activities not otherwise eligible is being retained. It is being edited and moved from § 570.200(b) to § 570.200(i). Further information on eligible uses of UDAG funds is provided in 24 CFR 570.455 and 570.456 as recently revised (47 FR 7986) (February 23, 1982).

Paragraph (d) describes special provisions concerning consultant activities. It is essentially the same as current paragraph (g). The limitation on the compensation of consultants in an employer-employee type of relationship is required by section 408 of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1982 (Pub. L. 97–101).

Current paragraph (e), Activities outside an applicant's boundaries, is also being deleted. It is considered unnecessary inasmuch as HUD will no longer determine whether such activities are, or are not, plainly inappropriate to meet the identified needs of the recipient.

Paragraph (g) describes the 20 percent limitation on planning and general administrative costs which is being imposed by each of the appropriation acts since Fiscal Year 1979. This provision is currently included in paragraph (i). This paragraph is being revised to indicate how the limitation applies in the absence of a detailed application and budget. Under this procedure, recipients will account for planning and administrative costs by appropriate allocation to a specific annual grant (which includes any surplus urban renewal funds awarded under the same grant number). Unlike the current provision, only the grant amount, rather than "total program resources" is considered. This is because there is no longer a budget to provide a basis for computing total resources and because various approaches to program revisions and reprogramming created the potential for abuses and confusion on how the limit is calculated. This somewhat more restrictive approach is not expected to create a problem for recipients since experience has shown that 20 percent is a rather generous allowance for planning and general administration and since a detailed application is no longer required and citizen participation requirements are being reduced under the 1981 statutory amendments.

Current paragraphs (h), Model Cities activities, and (h), Transition policy for fiscal year 1978, are being deleted because they are obsolete. The remaining paragraphs are being redesignated accordingly. In addition, the section is being edited for clarity and brevity.

Basic eligible activities

The most significant change concerns the eligibility of public services. The HCD Amendments of 1981 amended the provision at section 105(a)(8) of the Act to remove restrictions on where such activities may be undertaken and to eliminate the requirements that such activities must be necessary or appropriate to support physical development activities and that recipients must first seek other Federal funds for such activities. The requirement that such services must be a new or quantifiable increase in the level of service currently provided from State or local funds is being retained. In addition, energy conservation is being included in the list of eligible public services. It should be noted that to the extent that energy conservation activities are eligible as rehabilitation, they should be classified as such and, therefore, not be included in the percentage limitation on public services discussed below.

The revised statutory provision now limits public service activities to 10 percent of grant funds received. Localities which have obligated funds to carry out public service activities prior to the beginning of their program funded by Federal Fiscal Year 1982 appropriations may continue such activities to completion under the provisions in effect at that time. Any public service activity where the local obligation occurs after that start of the recipients's program funded from Federal Fiscal Year 1982 appropriations will be subject to the new rule.

Compliance with the 10 percent limitation will be based on obligations (not expenditures) incurred in each program year. Thus the date on which public service funds are locally obligated will determine the program year against which such funds will be counted. For example, all CDBG funds for public service activities (regardless of the source of such funds, such as program income) obligated during the recipient's FY 1982 program year will be counted in determining whether more than 10 percent of the FY 1982 grant amount is being used for public service activities (even though some of the obligated funds may not be expended until future program years). Using this principle, public service funds obligated prior to the beginning of the recipient's FY 1982 program year are not subject to the 10 percent limitation, but must comply with all current requirements.

The revised regulation also implements the new statutory provision which permits the Department to allow recipients to exceed the 10 percent limit for Fiscal Years 1982–1984, if they allocated more than 10 percent of their Fiscal Year 1981 grant for public services. A recipient that allocated more than 10 percent of its grant for public service activities in Fiscal Year 1981 may, under these rules, continue to obligate funds during each of Fiscal Years 1982, 1983, and 1984 in amounts up to but not in excess of the Fiscal Year 1981 allocation. In Fiscal Year 1985, all recipients must comply with the 10 percent limitation. The specific dollar limit for a grantee will be computed each year as 10 percent of the new grant funds received for that program year.

Another significant change in this section concerns public facilities and improvements. The HCD Amendments of 1981 revise section 105(a)(14) of the Act to make eligible all public facilities and improvements carried out by public or private nonprofit entities. However, section 105(a)(2) of the Act, which was not amended, includes a specific list of those public facilities and improvements which are eligible and places restrictions on the eligibility of some of the listed activities. It was decided, nevertheless, that the listing of public facilities and improvements in section 105(a)(2) of the Act should no longer be considered all-inclusive.

Accordingly, paragraph (c) of § 570.201 of the regulations is being revised to make eligible the acquisition, construction, reconstruction, rehabilitation or installation of any public facility or improvement, with one exception: assistance to buildings and facilities for the general conduct of government is ineligible as provided in § 570.207(a) and OMB Circular A–87.

Paragraph (c) of § 570.201 also contains the specific statutory restrictions of section 105(a)(2) of the Act on recreational facilities established as a result of reclamation and other construction activities carried out in connection with a river and adjacent land, flood and drainage facilities, parking facilities, fire protection facilities and equipment, and solid waste disposal, recycling or conversion facilities.

The procedure for complying with the requirement that other Federal Funds must be sought as a condition of eligibility is currently included at § 570.607. It will be incorporated directly into § 570.201(c)(1). In addition, as part of our deregulation efforts to simplify administrative requirements, this revised provision will no longer require that the recipient submit a special certification to HUD concerning the unavailability of other Federal Funds, and obtain written HUD authorization to incur costs. The revised provision will require that the recipient cannot obligate or expend funds for activities subject to this restriction until the required procedures have been complete.

In addition, this paragraph contains specific reference to the eligibility of energy efficient design and improvements in public facilities. These newly eligible energy activities were added by the HCD Act of 1980.

Reference to the authority of any public or private nonprofit entity to acquire title to public facilities is also included here. This is implied, but not explicitly stated in current § 570.204(b).

The paragraphs on acquisition and interim assistance activities are being revised to eliminate repetition of activities eligible under other provisions.

Eligible rehabilitation and preservation activities

This first three paragraphs of this section are being entirely reorganized and combined into two paragraphs for purposes of clarity. Paragraph (a) now specifies the types of buildings and improvements which can be rehabilitated with CDBG funds. All types of privately owned buildings and improvements may be assisted. This includes manufactured (mobile) homes that are classified as real property under State or local law. The separate paragraph on public housing modernization is being deleted because in practice it has been found to restrict unduly the scope of rehabilitation acitivities for low income public housing. Low income public housing and other publicly owned residential buildings and improvements are included as eligible for any type of rehabilitation. Other types of public buildings may be rehabilitated if they are generally eligible for assistance.

Paragraph (b) describes the types of rehabilitation activities that are eligible. It includes all activities currently listed in § 570.202(c), and in addition, includes specific references to security devices (such as smoke detectors and deadbolt locks, water conservation improvements (such as water saving faucets and shower heads), and certain types of rehabilitation services. Energy conservation improvements, currently listed as eligible only for rehabilitation of private property, are now permitted for all types of eligible buildings and improvements as provided in recent statutory amendments. The provision on rehabilitation services is being amended to make clear that the cost of determining appropriate energy conservation improvements (e.g., an energy audit) is an eligible CDBG expenditure. The requirement that properties acquired for the purpose of rehabilitation must be rehabilitated to meet the Section 8 Existing Housing Quality Standards and the Cost-Effective Energy Conservation Standards is being deleted. Localities that believe that these standards are appropriate may of course apply them in administering their programs.

A new paragraph is being added on the renovation of closed school buildings as an eligible rehabilitation activity. Such buildings may be rehabilitated for use as housing or for use as an eligible facility.

The paragraph on historic preservation is being redesignated as paragraph (d) and rewritten for clarity. Any historic property may be preserved or restored, including public buildings not eligible for other types of assistance. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings for the general conduct of government.

Special economic development activities

This section is being substantially revised and incorporates new provisions added by the HCD Amendments of 1981. Recipients may now provide direct assistance to private, for profit entities when necessary or appropriate to carry out an economic development project. Such entities may use CDBG funds for any activity related to an economic development project, including working capital, operating funds, technical or management assistance, as well as for land acquisition and the acquisition, construction, reconstruction, rehabilitation, or installation of commercial or industrial buildings or improvements.

Specific references to land acquisition and public facilities currently included in this section are being deleted, since such activities are eligible under §§ 570.201(a) and 570.201(c), respectively, and need not be repeated here.

All activities authorized by this section are eligible only if the recipient determines that they are necessary or appropriate to carry out an economic development project. As in other cases where such determinations are required, the recipient must document its project files prior to initiating such activities.

Activities by subrecipients

This section is being revised significantly. It includes clarifications in the definitions of the three types of subrecipients authorized to receive funds to carry out neighborhood revitalization, economic development, and energy conservation activities that are otherwise ineligible. The reference to Small Business Investment Companies (SBIC's) is being modified to add the term "section 301(d)" to make clear that only one type of SBIC is included in this section and therefore, authorized to undertake otherwise ineligible activities. The definition of Local Development Corporations (LDCs) is being revised to include entities organized under section 503 as well as section 502 of the Small Business Investment Act of 1958 in order to reflect SBA's current emphasis on section 503 LDC's. The meaning of the term "other similar entities" is being clarified to indicate that they must be similar to SBA 502 or 503 entities or entities organized under Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974. Statewide entities, other than section 501 corporations, are not included in this definition.

When subrecipients are designated to carry out public services or planning and administrative activities, such costs are included in the percentage limitations which apply to these activities.

When activities not otherwise listed as eligible are carried out under the authority of this section the locality must determine that such activities are necessary or appropriate to achieve its community development objectives and maintain documentation for such determination.

Eligible planning and policy-planning-management-capacity building activities

This section is being simplified and reorganized to generally list broad categories of planning activities which can be undertaken, and to delete lengthy explanatory text. Included in this general listing of planning activities are: community development plans (recipients are no longer required to prepare a Community Development and Housing Plan or an Annual Community Development Program), comprehensive plans (the 1981 statutory amendments authorize comprehensive planning activities without special qualifications), functional plans, and other plans and studies. Energy use and conservation plans listed in this section as a functional planning activity, are authorize under the 1980 statutory amendments. Energy audits unrelated to specific rehabilitation activities (see § 570.202(b)(4)) are eligible under this section. Energy audits may also be eligible as a public service activity under § 570.201(e).

In the category "other plans and studies," the reference to the exclusion of engineering and design costs for individual projects is being clarified to indicate that such costs are eligible as a cost of the activity itself under §§ 570.201–570.204. Environmental studies, currently included as an eligible administrative cost at § 570.206(h), will now be included in this section at § 570.205(a)(4)(iv). Support of clearinghouse functions may be carried out with CDBG funds, even though clearinghouse reviews are no longer required to receive CDBG funds. Such activities are now authorized by the statute in recognition that some receipts may choose to use their CDBG funds to support the activities of the clearinghouse currently assisted through the 701 Planning Assistance program, which has now been repealed.

All costs eligible under this section are subject to the 20 percent limitation on planning and administrative costs.

Eligible administrative costs.

A new paragraph, § 570.206(g)(5), is being added to this section to clarify eligible housing pre-construction costs. This new paragraph specifies that the cost of issuance of mortgage revenue bonds used to finance the construction of new housing for lower income persons is an eligible administrative cost. However, the costs associated with the payment or guarantee of the principal or interest on such bonds are not eligible.

This section contains no other substantive changes, but is being edited for clarity, and some of the examples are being deleted. Recipients are reminded that only general management, oversight, and coordination costs and other specifically included administrative costs are covered by this section. The cost of staff directly involved in carrying out specific activities is eligible as a cost of that activity under the applicable eligibility provision. Such project-specific staff costs are therefore not included in the 20 percent limitation which applies to the total of costs under this section and § 570.205.

Ineligible activities

This section is being revised to reflect the removal of restrictions on public facilities by the provisions of section 105(a)(14) of the Act as revised by the HCD Amendments of 1981, and to clarify other provisions. The introduction to this section provides general guidance on determining ineligible activities. Paragraph (a) provides for those activities which may not, under any circumstances, be carried out with CDBG funds, and jails are being specifically identified as a type of general governmental building not eligible. The prohibition on the use of funds for political activities is being revised to clarify the fact that facilities originally assisted with CDBG funds may be used on an incidental basis for political meetings, provided that all parties and organizations are treated equally. Paragraph (b) describes activities which may not be carried out with CDBG funds unless authorized under special provision noted in this Subpart.

Subpart D—Entitlement Grants

Subpart D, which contains requirements for Entitlement grantees, is being substantially revised as a result of the 1981 amendments. The major impact of the amendments is to re-define the process by which Entitlement grantees obtain their CDBG funds and the Department's role in making those grants.

Under the amendments, a simplified statement replaces the currently required application. Accordingly, current § 570.301 Planning considerations, § 570.304 Community Development and Housing Plan and § 570.305 Annual Community Development Program are being eliminated. In addition, the legislative changes have eliminated the clearinghouse review requirements and thus § 570.310, A–95 clearinghouse review and comment, is also being deleted.

The statute no longer authorizes formal front-end review by HUD. Accordingly, provisions currently in paragraphs (a), (b), (c) and (d), of § 570.311 HUD review and approval of application, are being eliminated. Also, the portions of § 570.312 (a), (e), (f), (g) and (h), Amendments, dealing with the amendment of the community development portion of the application are being eliminated. As of the effective date of these regulations, Entitlement grantees will no longer be required to amend the community development portion of current applications. The portions of this section which relate to the amendment of a Housing Assistance Plan (HAP) are being rewritten and included in § 570.306 Housing Assistance Plans.

In eliminating the application requirements, the legislative amendments also redefine citizen participation requirements. Accordingly, current § 570.303, Citizen Participation, is being eliminated as a separate section. Citizen participation requirements will now be included under § 570.301(b), Presubmission requirements.

The standards for determining compliance with the primary objectives, currently contained in § 570.302, are being deleted from this Subpart. The requirement for compliance will instead be covered under Subpart C for two reasons. First, past experience under the entitlement program has shown the importance of considering how activities comply with the national objectives at the same time that the basic eligibility of the activity is judged. Secondly, the Department has decided to use the same general approach for both the Entitlement and HUD-administered Small Cities programs. The standards HUD will consider in reviewing grantees' performance against the primary objectives are described in a new provision (§ 570.901) contained in Subpart O.

The Housing Assistance Plan (HAP) requirements in § 570.306 are being reduced and simplified by substituting many of the provisions currently included in the Small Cities HAP regulations, § 570.437, as revised on February 23, 1981 (46 FR 13678). Grantees are also given more flexibility in developing their HAPs. Commensurate with the deletion of an application, of which the HAP was a part, the time frame for submission of the HAP is being changed so that each entitlement grantee will submit its HAP between September 1 and October 31 of each year, except in 1982 when grantees will have until December 31 to submit their HAPs.

Special rules governing the qualification of counties as urban counties, and joint submissions by urban counties and metropolitan cities are set forth in §§ 570.307 and 570.308, respectively, primarily reflecting the 1980 amendments.

General

Section 570.300 briefly establishes the applicability of this Subpart for Entitlement grantees.

Presubmission requirements

Section 570.301 sets forth the requirements a grantee must meet prior to making a submission to HUD. These requirements simply re-state the statutory minimum actions. Grantees may determine the sequence they will follow in carrying these out:

1. The preparation of a proposed statement of community development objectives and projected use of funds;
2. The provision of information to citizens on the amount of CDBG funds available and the range of community development and housing activities that may be undertaken;
3. The provision of at least one public hearing to obtain the views of citizens on the grantee's community development and housing needs;
4. The publication of the grantee's proposed statement so as to afford affected citizens an opportunity to comment;
5. Consideration of citizen comments on the proposed statement prior to the preparation of the final statement; and
6. The preparation of the final statement of community development objectives and projected use of funds and making the final statement available to the public.

Submission requirements

Section 570.302 establishes the timing requirements for submission by an Entitlement grantee in order to receive

its annual grant. A grantee must submit its final statement to HUD between December 1 and September 30 of the Federal Fiscal Year (FFY) for which the funds were appropriated. December 1 was selected as the earliest date because HUD will not normally have all of the information needed to determine Entitlement amounts to be allocated until then. Any submission not received by September 30 of each FFY (which is the latest date allowed under the Act) will be subject to the reallocation provisions of this Part. This section also defines a program year which is currently defined in § 570.308(b). A program year shall normally run for a twelve month period. However, a grantee may lengthen or shorten its program year at its discretion, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have normally ended. HUD needs advance notification so that it may properly schedule an overall review of the grantee's performance shortly before making a new grant. A grantee must submit certifications, satisfactory to the Secretary, as described in § 570.303 and a copy of its final statement of community development objectives and projected use of funds before HUD can make a grant.

Certifications

Section 570.303 contains the certifications the grantee is required to submit with the final statement. These certifications were currently contained in § 570.307 of the regulations. The certifications enumerated in this section are generally limited to those specifically mentioned in Title I of the Act. Rather than continuing the current practice of including an extensive list of cross-cutting statutory and other requirements in the certifications, this rule requires a general certification in the form prescribed in the statute that the recipient will comply with such "other applicable laws." Laws which the Secretary will treat as applicable for purposes of the determinations of compliance required to be made by the Secretary upon performance review are specified in Subpart K.

Making the grant

Section 570.304. If a grantee makes a complete submission, including satisfactory certifications, within the established deadlines, the Department will make a grant for the full Entitlement amount unless the Secretary has made a determination that the grantee's performance is unsatisfactory and warrants a grant reduction. In the case of unsatisfactory performance, the Department may also make a conditional grant. Failure of the grantee to make a complete submission and acceptable certifications within the established deadline will result in its forfeiting the entire Entitlement amount.

Housing assistance plans

Current requirements governing the Housing Assistance Plan (HAP), are contained in § 570.306, adopted on August 27, 1979 (44 FR 50248) and amended on September 9, 1980 (45 FR 59308). The modifications adopted in this interim rule contains many of the same provisions adopted for the HUD-Administered Small Cities program on February 23, 1981 (46 FR 13678), contained in § 570.437. In addition, this rule incorporates the provisions of the recently enacted 1981 legislation.

Under the Act, each Entitlement grantee must submit a HAP. In its HAP, the grantee surveys housing conditions, assesses the housing assistance needs of lower income households, establishes goals to meet its housing needs, and indicates the general locations of proposed new and substantially rehabilitated assisted housing. A city or county uses the HAP to link community development activities with provision of assisted housing and to influence the development and location of assisted housing. HUD uses the HAP's in the allocation of assisted housing and as the basis to approve assisted housing in the grantee's jurisdiction. HUD also compares the grantee's performance report with the HAP to monitor and evaluate the grantee's provision of assisted housing.

Changes to § 570.306 of the regulations are discussed below.

The provisions of § 570.306(a), Purpose; § 570.306(b), Use; and § 570.306(c), Responsibility of the grantee, are not being changed substantively and are self-explanatory.

Paragraph § 570.306(d), General, reflects the recently enacted legislation which deletes the requirement for the CDBG application, of which the HAP has been a part. It does, however, provide that Entitlement grants shall only be made under the condition that the unit of general local government has certified that it is following a current housing assistance plan which has been approved by the Secretary.

Under the new statute, the Secretary has the authority to establish the dates and manner for the submission of housing assistance plans. The Department has decided to require that all housing assistance plans cover the same time period—the Federal Fiscal Year (FFY)—and that they be submitted for HUD review and approval between September 1 and October 31 each year. The current regulations involve two overlapping HAP cycles for each grantee. The Section 8/Low Income Public Housing (LIPH) portion of a grantee's goals and performance evaluation has been on a delayed FFY cycle, while all other goals and performance evaluations are on a program year cycle. For example, a HAP which was approved early in the year has not gone into effect (for Section 8/LIPH) until the following October 1. This has been necessary in order for the HAP to be used by HUD in the Section 8/LIPH allocation process during the next allocation. These dual cycles have caused considerable administrative complexities for both grantee and HUD staff.

In order to provide consistency and eliminate the dual cycles, these regulations establish September 1–October 31 as the submission period for all Entitlement grantees' Housing Assistance Plans, with the period covered by the HAP corresponding to the applicable FFY. By establishing this submission period for all HAPs, the Department will be able to both allocate units and uniformly measure HAP performance.

An exception to the above submission requirement is provided for a new entitlement grantee which is not notified by HUD of the requirement in time to submit a Housing Assistance Plan during October. In such cases, the grantee must submit an interim HAP. The interim HAP shall meet *all of the statutory requirements* applicable to HAPs. The annual goal will only include such numerical goals as may be required to enable the grantee to "phase-in" to the new HAP process. The interim HAP will cover the period from the beginning of the grantee's program year through the next September 30, but will be amended when the grantee submits the three year HAP with the required tables during the September 1–October 31 submission period during which the interim HAP expires. The period of coverage of the interim HAP will be considered part of and will be added to a grantee's three year coverage of its new HAP. Because of the requirement that a grantee have an approved HAP at the time of its submission of its final statement and certifications, an interim HAP must be submitted to HUD no later than 45 days prior to the submission to HUD of such final statement.

For 1982 only

Grantees will be allowed to submit HAPs until December 31, 1982. This

extended date (rather than October 31) is permitted in order that grantees may have sufficient time after the effective date of these regulations to prepare the HAP and because of delays in the expected availability of 1980 Census data which HUD is purchasing for the grantees' use. Grantees which have a three year goal extending beyond the end of FFY 1982 are required to submit a completely new HAP according to these regulations this year.

Paragraph (e), Housing conditions, needs, goals, and locations, describes the five components of a HAP — a survey of housing conditions, an assessment of housing assistance needs, a three year goal, an annual goal, and identification of general locations for newly constructed and for substantially rehabilitated assisted housing.

Paragraph (e)(1), which explains the requirements for the survey of housing conditions, currently required estimates of units which are suitable for rehabilitation only in cases where the grantee proposed goals for rehabilitation. The exception is being deleted and all grantees will be required to develop such estimates. HUD believes that only by developing such estimates can a proper determination be made by the grantee whether goals for rehabilitation should be established.

Paragraph (e)(2) details which groups are to be included in the assessment of housing assistance needs and, again is similar to existing requirements, with an important exception: the current detailed description of how to estimate the number of households expected to reside in the community is deleted. Grantees may use the methodology described in the HAP instructions but will not be required to do so. A grantee must, however, submit its best estimate of the number of lower income households which reasonably can be expected to reside in its jurisdiction, based on data generally available from Federal, State, areawide, or local sources. Such households are those that can be expected to reside (ETR) as a result of existing and projected employment, or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary; and, as provided in the recently enacted legislation, the estimate must take into account population changes known to have occurred since the publication of the last Census data. When considering such changes, the grantee shall use published estimates such as those which are provided by the Bureau of the Census, the Department of Labor, and/or comparable State or local agencies. For elderly households, the estimate must be based on the number seeking assisted housing in the community or using the community's health services. The Conference Report of the recently enacted legislation makes reference to consideration of vacant housing units which might be available in surrounding areas in the development of ETR estimates. No specific formula is prescribed in these regulations, and general guidance will be provided in the HAP instructions. Currently, HUD did not permit, in practice, the ETR estimate to be less than zero, as the law provides only for estimates of those expected to move into the community. The regulations now specifically state that ETR may not be less than zero.

Paragraph (e)(2) also explains how handicapped persons are to be included in the three household types.

Paragraph (e)(3) requires all grantees to prepare a three year goal for assisted housing. Although the three year goal is not a statutory requirement, it is being retained because the Department has determined that it is essential to the effective use of HAPs. At the start of the CDBG program, the three year goal was made optional. However, it was subsequently made mandatory when, under actual operating conditions, it became apparent that the uncertainties and restriction inherent in the provision of housing assistance make the establishment of annual goals unrealistic and unworkable unless they are taken in a longer term context.

The three year goal significantly increase a community's ability to provide housing assistance in proportion to its needs by household type. Additionally, the three year goal enables HUD to approve a project which was not provided for in the community's annual goal, because the project was not expected to be developed so soon, but was included in its three year goal.

Given the expectation of continued reduced levels of Federal resources for housing assistance, and the increased difficulty local governments will have in predicting the amount and type of such assistance that may be available for use in meeting their needs, the Department believes it is important to retain the three year goal for future HAPs.

The three year goal has two kinds of closely related subgoals, numerical and proportional. The numerical goals identify the number of households expected to be served over the three year term of the HAP by tenure (renter, owner), and by household type (elderly, small family, and large family). In response to comments from many grantees, provision is also being made for establishing goals for programs designed to improve the condition of the housing stock. The numerical goal must be realistic in terms of the number of assisted units the grantee can reasonably expect over the three year term of the HAP and, where applicable, must include only projects of feasible size.

The proportional goal identifies the percentage of the total number of assisted units to be provided to each household type. HUD requires grantees, when establishing goals, to accommodate the needs of each household type within each tenure group in proportion to their need within the tenure group. Because the number of assisted housing units some grantees can reasonably expect is small, it is impracticable to require that the numerical goals always be precisely proportional to need. Exceptions to the proportionality requirement may be made on this and other bases listed in the regulation.

The way in which housing type (for example, new, rehabilitation, existing) is treated in the three year goal is also changed in paragraph (e)(3) in order to clarify HUD policy with regard to its approval of assisted housing projects. Currently, grantees were required to specify housing type by household type in the three year goal. Thus, a community had to establish, before the beginning of the HAP's term, which housing type it would accept in each household type. If, during the HAP's term, an assisted housing application was submitted for a housing type not specified in a community's HAP for the applicable household type, HUD frequently was not able to approve the application for assisted housing unless the community amended its HAP. This resulted in many HAP amendments, or the loss of the assisted housing when the amendment process took too long.

Paragraph (e)(3), therefore, requires only that the grantee specify the maximum number of assisted housing units it will accept in any of the housing types. A grantee can indicate that it will accept more than one housing type to meet its HAP goals for HUD assisted housing, and will not need to match housing type with household type in the three year goal. Amendments by the grantee thus will be required less frequently. Both HUD and the grantee will have more flexibility—the grantee in choosing acceptable housing types and HUD in approving applications for assisted housing in housing types acceptable to the community.

Paragraph (e)(4) explains the contents of the annual goal. The goal must allow

for development of feasibly sized projects, and identify any projects expected to be undertaken during the year by tenure, household type, and housing type. The grantee must also identify specific actions it will take during the year to achieve its annual goals and, if appropriate, its three year goals.

HUD will review HAP goals based on a realistic estimate of the assisted housing resources expected to be available to the grantee. The requirement for realistic goals is given additional emphasis and the 15 percent minimum goal currently in effect is deleted. This change is being made because the total national resources for Section 8/LIPH have been significantly reduced since the 15 percent provision was instituted, and there is no indication that resources will return to former levels. A specific percent of need will no longer be used as the principal basis for establishing the minimum size of goals. Instead, a realistic estimate of resources expected to be available to the grantee over the term of the HAP will be the primary measure. The grantee's goals must reflect a reasonable effort to meet housing needs in the community and must incorporate all resources reasonably expected to be available. HUD will continue to disapprove HAPs which contain goals which are plainly inappropriate to meeting the grantee's needs.

HUD will also review the grantee's HAP goals against the requirements for proportionality as discussed above. Furthermore, HUD will review the narrative to determine that the grantee recognizes and acknowledges the problems it will likely encounter in addressing its needs and has identified actions it will take to ensure the timely achievement of its goals.

Paragraph (e)(5) reflects the existing requirement that a grantee having goals for new construction and/or substantial rehabilitation identify the general locations of proposed assisted housing. Because of much confusion in the past for grantees, housing authorities, developers, and for HUD, a grantee now has the option to designate one or more of the general locations it identifies in its HAP as High Priority areas. This will enable the grantee to clearly state its preferences with respect to locations in its jurisdiction and will enable housing authorities, developers, and HUD to clearly understand such preferences. Designation of such High Priority general locations is compatible with provisions of HUD-assisted housing program ranking criteria providing higher ratings in connection with responsiveness to preferences and priorities of applicable HAPs. Changes to 24 CFR 891 provide that projects proposed in areas not designated as a general location in the HAP would not be approved without a HAP amendment. This change would also help to eliminate the confusion that has existed regarding the general locations portion of the HAP.

Paragraph (e)(6) explains the requirements of the interim HAP which will apply to grantees which were not notified by HUD in time to submit a HAP during the regular October submission period.

Paragraph (f) explains that HUD's review of the HAP will assure that the requirements of this section are being met, and that HUD will approve the HAP unless the grantee's stated conditions and needs are plainly inconsistent with generally available facts or data or that the grantee's proposed goals and activities are plainly inappropriate to meeting those needs.

Paragraph (g) replaces § 570.312(b) and details the requirements for HAP amendments.

Urban counties

Section 570.307. Interim regulations implementing a three year urban county qualification process, published in the **Federal Register** on September 14, 1981 (46 FR 45603), are being relocated from § 570.105 to this section, and are reworded somewhat for clarity.

Only one substantive change is being made in relocating this regulation. Unincorporated areas included in an urban county at the time of qualification, but which become incorporated during the three year urban county qualification period, will remain a part of the urban county for the remainder of that three year period and will not be eligible for separate grants under subparts D, F, or I.

Joint requests

Section 570.308. The provisions concerning inclusion of a metropolitan city as a part of an urban county currently located at § 570.105(h) are being separated into § 570.308 of this interim rule.

Subpart K—Other Program Requirements

Subpart K currently contains provisions regarding requirements of certain cross-cutting status and Executive Orders, or administrative policies, not specifically covered elsewhere in Part 570. Because of the deletion of references to specific cross-cutting requirements in the extensive certifications currently included in the grantee's application (see current § 570.307), Supart K is being substantially expanded. Certain of the specific provisions currently contained either in the certifications or Subpart K are being modified. In addition, conflict of interest provisions currently contained in the grant agreement are being added to the regulations.

General

Section 570.600 describes the general scope of Subpart K, relating it to certain provisions of the statute prescribing certifications of compliance with specific statutes or "other applicable laws" and describing determinations regarding such compliance required to be made by the Secretary upon performance review. The regulation rules that certain other statutes are expressly made applicable to activities assisted under the Act by specific provisions of the Act itself, while others not referred to in the Act may be applicable by their own terms. Generally, the cross-cutting requirements described in Subpart K are those specifically referred to in the Act or for which the Secretary otherwise has specific enforcement responsibility (e.g., the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and Lead-Based Paint Poisoning Prevention Act).

Certain statutes or Executive Orders not referred to in the Act and for which other departments or agencies have specific enforcement authority, but to which reference was currently included in the certification requirements or Subpart K, or both, are omitted. Included in this category are Executive Order 11246, which imposes equal employment opportunity obligations upon applicants for Federal assistance which may involve a construction contract, and the Hatch Act. Executive Order 11246 is administered by the Secretary of Labor, whose implementing regulations are contained in 41 CFR Chapter 60. The Department has recently sought the advice of the Department of Labor regarding the requirements of Executive Order 11246 in the context of the CDBG programs. Responsibility for investigating and prosecuting alleged violations of the Hatch Act, and for issuing advisory opinions concerning the Hatch Act, are vested in the Special Counsel of the Merit Systems Protection Board (see 5 U.S.C. 1206 (e), (g), and (l)). The Department expresses no view as to circumstances in which the Hatch Act may be applicable to State or local officials or employees by reason of CDBG assistance.

Reference to one specific cross-cutting requirement is being omitted on the ground that it is not required statutorily. Current § 570.606 requires that "every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds made available under this part" shall comply with accessibility standards issued pursuant to the Architectural Barriers Act of 1968 (42 U.S.C. 4151). However, the Architectural Barriers Act is not applicable to construction or rehabilitation assisted with CDBG funds because the CDBG statute does not provide authority for "standards for design, construction, or alteration" applicable to facilities constructed or rehabilitated with such assistance (see 42 U.S.C. 4151(3)). The Department heretofore has imposed the accessibility standards issued pursuant to the Architectural Barriers Act upon structures constructed or altered with CDBG as an administratively adopted requirement notwithstanding that such requirements are not imposed by the Architectural Barriers Act itself. Those requirements are deleted in this regulation. The Department notes, however, that accessibility requirements may be applicable to some facilities constructed or altered with CDBG assistance by reason of the applicability of section 504 of the Rehabilitation Act of 1973. This subject, therefore, will be addressed directly in the Department's regulations implementing section 504, when promulgated.

Section 570.600 provides that the absence of mention in the regulation of any statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. Generally speaking, however, the absence of such mention in the regulation does indicate that compliance with any such statute or order will not be a subject of the Secretary's performance review.

Certain administrative requirements are being deleted or transferred. The provision concerning local option activities and contingency accounts contained in current § 570.600 is being made obsolete by statutory amendments. The provisions describing procedures to be followed where other Federal funds must be sought, contained in current § 570.607, are being incorporated in a revised form, in § 570.201(c)(1).

Civil Rights Statutes

The Act contains specific references to Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. The requirements of these statutes are included in § 570.601, together with the requirements of Executive Order 11063, regarding equal opportunity in housing.

Nondiscrimination

Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. Section 570.602 describes more fully the requirements of section 109 as prescribed by the Secretary. These provisions are continued without change from those currently contained in § 570.601, which in turn are modeled in major part upon HUD's Title VI implementing regulation (see 24 CFR 1.4). However, a paragraph (c) is being added to reflect the statutory addition to section 109 of specific references to the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act of 1973.

Labor Standards

Section 110 of the Act makes Davis-Bacon Act wage standards applicable to construction financed in whole or in part with assistance received under the Act. Section 570.603 of the interim regulation describes these and related requirements in a manner substantially similar to current § 570.605, except that the statutory language "financed in whole or in part with assistance received under the Act" is being substituted for the phrase "assisted under the Act." The Department did not intend the term "assisted" to extend coverage of the wage standards requirements beyond that imposed by the Act. Under some circumstances, however, such as the use of program authority for loan guarantees or default reserves, "assistance" may be provided which does not bear a sufficiently direct relationship to the construction to constitute "financing" thereof. The Department currently has granted waivers of the requirements imposed by current § 560.605 in such circumstances. Under the revised regulation, its requirements would not apply in those circumstances.

Environment Standards

Section 570.604 describes the substantive and procedural requirements prescribed by or pursuant to section 104(f) of the Act. No substantive change is effected from current requirements.

Certain statutes and executive orders currently specified in the certifications or in Subpart K are made applicable by their designation in 24 CFR § 58.5 as "other provisions of law which further the purpose of the National Environmental Policy Act of 1969" (section 104(f) of the Act). Accordingly, specific reference thereto in Subpart K is being deleted. These laws and executive orders include: the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological and Historic Preservation Act (as it amends the Resource Salvage Act of 1960 (16 U.S.C. 469 *et seq.*)); Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 *et seq.*); and Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*). Reference to the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), currently at § 570.610, has been deleted because this statute is applicable without regard to the receipt or use of Federal funds.

National Flood Insurance Program

The provisions of current § 560.609 describing requirements flowing from the Flood Disaster Protection Act of 1973 are continued in § 560.605 without substantial change except for reference to the Director of the Federal Emergency Management Agency, to whom the Secretary's functions under that statute were transferred by Reorganization Plan No. 3 of 1978. Reference to these requirements is also contained in 24 CFR 58.5. However, specific reference is also being continued in Subpart K in order to avoid any question that might arise as to whether the insurance requirements can be regarded as elements of "environmental review, decisionmaking, and action" within the meaning of section 104(f) of the Act.

Relocation and Acquisition

Section 210 of the Uniform Act places certain obligations on the head of any Federal agency entering into a grant relationship with a State agency (which includes political subdivisions and agencies thereof) "under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any persons."

Although the Uniform Act is not referred to in the Act, it had been assumed by the Department since 1974 that the Uniform Act applies to displacements resulting from acquisitions by State agencies for community development activities assisted by block grant funds under the Act (see current § 570.602).

In 1979, the Fifth Circuit Court of Appeals, in an *en banc* decision, held that the Uniform Act did not apply to acquisitions financed by general revenue-sharing funds. One principal ground of the decision was that the Uniform Act "contemplates discretionary Federal approval and specific requests to fund specific projects" while the revenue-sharing statute provided no such opportunity for Federal project approval. The Court declared itself "at a loss to understand how these two Acts can work in consort if one Act provides for automatic distribution and the other Act contemplates prior Federal approval for specifically proposed projects. The distinguishing feature between the two Acts in that URA envisions Federal control over a funded project while revenue sharing does not." *Goolsby v. Blumenthal,* 590 F.2d 1360, 1371–72 (5th Cir. 1979), cert. denied, 444 U.S. 970 (1979).

The Community Development Block grant program is not a general revenue-sharing program. Instead of the almost unlimited purposes for which general revenue-sharing funds may be utilized, the use of CDBG funds is limited by the primary objectives of the block grant legislation. However, in the particular respects cited by the Fifth Circuit as inconsistent with the thrust of the Uniform Act, the CDBG program, particularly as a result of the 1981 amendments eliminating the application process, bears a close resemblance to the revenue-sharing mechanism. The Department, therefore, has solicited the opinion of the Department of Justice as to whether the Uniform Act must continue to be considered applicable to activities assisted under the Act.

In its implementation of the State's Program for nonentitlement areas, the Department elected not to mandate compliance with the Uniform Act pending receipt of the requested advice from the Department of Justice (see 47 FR 15295 (April 8, 1982)). In the case of the Entitlement and other programs now covered by current § 570.602, however, the Department has elected not to disrupt existing practice unless and until nonapplicability of the statutory requirements is confirmed. Accordingly, the requirements of the existing regulation are continued without substantial change in § 570.606. In addition, specific reference to the requirements of Title III of the Uniform Act is being added. (These requirements were referred to in the certifications required by current § 570.307(n) but had not been referred to specifically in Subpart K.)

Section 570.606 also continues the reference, currently contained in § 570.602(c), to the grantee's discretionary authority to provide relocation payments and assistance for displacements not covered by the Uniform Act, or at levels above those established by the Uniform Act. The requirement that such assistance not required by the Uniform Act be determined by the grantee to be appropriate has been retained, although the basis for such a determination no longer includes reference to "its community development program" to reflect the 1981 amendments.

Employment and Contracting Opportunities

Section 570.607 describes the requirements of section 3 of the Housing and Urban Development Act of 1968, currently referred to in the certifications (see current § 570.307(m)). To comply with these requirements, grantees must adopt appropriate procedures and requirements to assure good faith efforts to provide that to the greatest extent feasible opportunities for training and employment will be given to lower income residents of the unit of local government or metropolitan area (or nonmetropolitan county) in which an assisted project is located and to award contractors to business concerns located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. While it is noted that recipients may refer to HUD regulations at 24 CFR Part 135 for guidance, these regulations are not directly applicable to activities assisted under the Act. Part 135 was promulgated prior to adoption of the Act and has not been revised subsequently to detail its application in the context of CDBG programs.

Lead-Based Paint Poisoning

Section 570.608 continues, without substantive change, the prohibitions and requirements contained in current § 570.611. Section 570.608(a) refers to the prohibition on use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form, as provided by Section 402(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831) and implemented in 24 CFR Part 35, Subpart B.

Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822) requires the Secretary to establish procedures to "eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance and housing assistance payments under a program administered by the Secretary." Section 302 further provides that such procedures shall apply to all housing constructed prior to 1950 and "shall as a minimum provide for" appropriate measures to eliminate as far as practicable immediate hazards due to the presence of lead-based paint to which children may be exposed, and certain notifications to purchasers and tenants of such housing. The procedures and requirements adopted by the Secretary pursuant to such directions appear at 24 CFR Part 35, Subparts A and C.

Notwithstanding the limitation of the statutory coverage to "mortgage insurance or housing assistance payments," the Department historically has extended its lead-based paint hazard elimination and notification requirements to all HUD programs by defining the coverage of its implementing regulations in terms of "HUD-associated housing," which includes "any residential structure . . . financially assisted under any programs administered by the Secretary, when such structures are being constructed, sold, leased, rehabilitated (including routine maintenance work), modernized or improved with any form of HUD financial assistance whether by grant, loan, advance, housing assistance payments, the proceeds of a HUD-guaranteed loan or a HUD-insured mortgage" (24 CFR 35.1(e)). Application of the hazard elimination and notification requirements to the block grant program is confirmed by § 570.611 of the current regulations.

The Department's General Counsel believes that block grants are not "housing assistance payments" within the meaning of Section 302. Nevertheless, the Department does not propose to effect a change in its long-standing administrative practice through this interim rule, which is proposed to become effective prior to consideration of public comments. Accordingly, § 570.608(b) of the interim rule continues the application of the hazard elimination and notification requirements to the block grant programs covered by Subpart K. However, the Department specifically solicits comment on the

appropriateness of this requirement. Comments on this subject should take account of the fact that elimination or modification of the regulatory requirement would not diminish or otherwise affect the obligation of recipients or owners of residential structures being rehabilitated or modernized with block grant assistance to comply with State or local laws, ordinances, codes, or regulations requiring lead-based paint hazard abatement.

Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

Section 570.609 continues, without substantive change, the prohibitions contained in current § 570.614.

Uniform Administrative Requirements and Cost Principles

Section 570.610 specifies the applicability of grant management circulars issued by the Office of Management and Budget (OMB). The cited circulars set forth financial and administrative policies and guidelines related to administering Federal funds. A reference to Circular A–102 was currently included in the certifications (see current § 570.307(g)), and several references to specific requirements of these circulars are also included in Subpart J, Grant Administration (see, e.g., §§ 570.502(a)(2), 570.505–.508).

Conflict of Interest

Section 570.611, establishes, in regulatory form, conflict of interest provisions currently included in the certifications (see current § 570.307(p)) and the grant agreement. The establishment of conflict of interest provisions is designed to ensure adherence to appropriate standards of ethical conduct and—prevent fraud.

The general rule prohibits persons who exercise or exercised any functions or responsibilities with respect to the Community Development Block Grant or Urban Development Action Grants programs or who are in a position to participate in the decisionmaking process or gain inside information with regard to a CDBG or UDAG activity from obtaining a personal of financial interest or other benefit from assisted activities.

In order to provide necessary flexibility, exceptions to the general rule may be granted in accordance with specified requirements and standards. Such exceptions can be granted by the responsible HUD field official.

This subsection is not applicable to circumstances governed by Attachment O of OMB Circulars A–102 and A–110, which cover procurement of supplies, equipment, construction, and services by grant recipients and by subrecipients covered by § 570.204.

Subpart M—Loan Guarantees

Eligible applicants

Section 570.700(a) is being revised to delete the reference to § 570.102 with respect to recipients of basic grant amounts. This provision now references section 106 of the Act. The provision has also been modified to remove unnecessary language.

Section 570.700(b) is being revised to clarify that an applicant which designates a public agency to receive a loan guarantee must pledge its current and future grants under Title I. The provision had indicated that only entitlement grants were required to be pledged.

Eligible activities

Section 570.701, governing eligible activities, is being substantially revised. Paragraph (a) of this section is expanded to specify that acquisition for economic development purposes may include agreements for the purchase of real property to be improved by the seller prior to the acquisition. Commencement of work on the improvements would not be required, however, until HUD approves the applicant's loan guarantee request. The agreements also may provide that the purchase is contingent on the procurement of interim financing by the seller and that the improved property may be leased back to the seller, including leaseback with an option to purchase upon full repayment of the HUD guaranteed loan. Acquisition and/or improvements undertaken by the seller in whole or in part with interim financing shall be subject to the requirements otherwise applicable to such activities under the block grant program.

Section 570.701(b) is being modified to permit rehabilitation of real property owned by a public agency designated by the applicant to receive loan guarantee assistance. Under the current status of the regulations a public agency may be designated to receive a loan guarantee in lieu of the applicant, but is unable to undertake all activities authorized for the applicant. The purpose of this change is to correct that inconsistency.

The other provisions of this section are being changed for greater clarity and to more accurately reflect the statutory restrictions on eligible activities.

Application requirements

Section 570.702 is being revised as a result of the elimination of application requirements for entitlement grant assistance under this Part. Applications for loan guarantee assistance are being submitted either as part of applications for grant assistance or as amendments thereto.

Separate applications for loan guarantee assistance will now be necessary. However, the presubmission and submission requirements for grants under Subpart D also apply to applications for loan guarantee assistance.

The applicant must comply with the presubmission requirements outlined in § 570.301. With respect to the statement of community development objectives and projected use of funds specified in § 570.301, an applicant may utilize the statement prepared for the annual grant in lieu of submitting a separate statement when the loan guarantee application is simultaneous with the grant submission. The activities to be undertaken with guaranteed loan funds must be clearly identified.

With respect to submission requirements, a certification concerning the adequacy of the applicant's existing land inventory is no longer required, since this document is not necessary to meet any statutory requirement. A provision pertaining to the Community Development Program, which is no longer required to be submitted in connection with grants, also is being eliminated.

Submission requirements include: a copy of the final statement of community development objectives and projected use of funds, a loan repayment schedule which identifies the sources of repayment, a certification as to the applicant's legal authority to make the pledge of grants required as security for the loan guarantee and the certifications specified in § 570.303.

Section 570.702(d), governing HUD review and approval of applications, is being substantially revised. The provisions setting forth criteria for disapproval and reasons for reducing the requested amount are being replaced by a single provision—§ 570.702(d)(3). This provision specifies that HUD may disapprove an application, or reduce the amount requested, if the loan guarantee constitutes an unacceptable financial risk, the amount requested exceeds the maximum amount permitted under § 570.703(a), funds are not available, the applicant's performance does not meet the standards prescribed in § 570.909, or activities are not listed as eligible under § 570.201 through § 570.203 and § 570.701(a) through (f).

Compliance with the primary objectives of the CDBG program will not

be a funding criterion for loan guarantee applications. Rather, compliance with the standards for the broad national objectives, set forth in § 570.901, will be reviewed in the context of the annual performance report. In this regard, the applicant will be subject to the full range of administrative actions specified in § 570.910 and to the statutory sanctions described in § 570.911 and § 570.913 if activities undertaken with guaranteed loan funds do not address one of the broad national objectives.

Section 570.702(e), which pertains to environmental review, is being modified to eliminate unnecessary provisions governing environmental assessments of multiyear projects. Such assessments are adequately covered under 24 CFR Part 58.

Loan requirements

Section 570.703(a), pertaining to the maximum loan amount, is being modified to eliminate requirements not statutorily required. Changes are also being made to reflect the elimination of entitlement grant application requirements.

Section 570.703(b)(2), requiring the applicant to pledge its grants as security for the loan guarantee, is being modified pursuant to a technical amendment to the statute. The term "approved" is being replaced by the term "made" to reflect the elimination of entitlement application requirements.

Subpart O—Program Management

The 1981 Amendments to the Act stated HUD's performance review responsibilities more specifically, reflecting deletion of an application for Entitlement grantees and the absence of a Housing Assistance Plan (HAP) for nonentitled grant recipients and, consequently, HUD review at those stages. The Department intends to modify its performance review requirements and standards accordingly and expects to issue substantial revisions to Subpart O during the early part of Fiscal Year 1983.

In these rules, a single provision is added to Subpart O stating the review standards for determining whether an activity is in accordance with the primary objectives because it addresses one of the broad national objectives. As a result of the transferral of these standards from Subpart D to Subpart O, they are made applicable to both the Entitlement and HUD-administered Small Cities programs for purposes of post-grant review. In the HUD-administered Small Cities program, these standards have been included at § 570.420(k)(2) for purposes of reviews at the application stage. The standards are being modified primarily to reflect the fact that, for entitlement grantees, there will no longer be a substantive front-end review and approval process. Some of the standards in the current regulations were dependent upon prior approval by HUD, which is no longer pertinent. For the sake of uniformity and ease of understanding, the standards are being redefined so they may more rapidly be applied on a post-expenditure basis. A provision is being included to state that, where the Department determines that an assisted activity does not meet one of these review standards, the grantee will be given reasonable opportunity to demonstrate to the satisfaction of the Secretary that the activity addresses one of the broad national objectives.

In general, the new standards as they will now appear in Subpart O are designed to be more clearly understandable. The following describes the new standards and discusses the major differences between them and those currently in Subpart D at § 570.302.

Overall Program Benefit

Under these interim rules, as under current regulations for the CDBG program, each activity must meet one of the broad national objectives of benefiting low and moderate income persons or aiding in the prevention or elimination of slums or blight. An activity may also be carried out where the grantee certifies that it is designed to meet other community development needs having a particular urgency. In the past, HUD reviewed each entitlement community's application to determine whether the extent to which the program as a whole would benefit low and moderate income persons would be plainly inappropriate in a three year context. (A more complete discussion of this history is contained in the Preamble to the Department's promulgation of the rule for the State Community Development Block Grant Program (47 FR 15291–2, April 8, 1982.) Furthermore, the Congress has stressed that the choice of eligible activities on which block grant funds are to be expended represents the recipient's determination as to which approach or approaches will best serve the primary objectives of the program. Therefore, in restructuring the approach used to determine compliance with the primary objectives, HUD will no longer conduct any review of the grantee's overall program with respect to benefit to low and moderate income persons.

Benefiting Low and Moderate Income Persons

The general standard for activities to qualify under the objective of benefiting low and moderate income persons remains the same as under the current rules. Activities which were limited to, or where the majority of the beneficiaries upon completion of the activity were expected to be, low and moderate income persons will be considered to have met the broad national objective of benefiting low and moderate income persons. However, the deletion of an application approval process necessitates certain changes in specific categories:

Exception Criteria

Currently, an exception is provided to the general rule that activities under this objective must principally benefit lower income persons for entitlement communities which contain few or no areas with concentrations of low and moderate income persons. Such entitlement communities were required to receive prior approval from HUD to qualify for such an exception. While significant variations in the application of this provison developed, such exceptions, under current § 570.302(d)(5), had been considered necessary because of the Department's emphasis on overall program benefit to low and moderate income persons. With the deletion of the application process, the granting of such exceptions is no longer considered to be feasible, and the elimination of a review for the extent of benefit of the overall program removes the major need for the exceptions. For these reasons and because this rule broadens the scope of activities which HUD will consider to meet the objective of elimination or prevention of slums and blight and expands the range of economic development activities able to be carried out in compliance with the national objectives, the Department expects that all CDBG recipients will be able to carry out programs meeting the primary objectives without needing such exceptions. Thus, the review standards in this interim rule do not contain that current exception provision.

Economically Distressed Entitlement Communities

The standards include a new provision that provides additional flexibility to economically distressed Entitlement communities enabling any economic development activity funded for the primary purpose of job creation or retention to be considered as addressing the objective of benefiting low and moderate income persons.

without requiring a demonstration that the majority of the jobs will be available to low and moderate income persons. To be eligible for this added flexibility, a metropolitan city or urban county must meet the minimum distress standards for UDAG and must qualify under at least three of the following four UDAG distress criteria:

—Unemployment
—Job Lag
—Poverty
—Per Capita Income

The Department believes that such communities face especially severe difficulties in providing jobs for their lower income residents, thus justifying the additional flexibility this provision will give them. The Department considered a similar provision for non-entitled communities, but rejected it because it might provide only a small segment of the total potential applicant pool an advantage in the competitive process. Significantly, by statute, non-entitled counties cannot qualify for UDAG. Thus, the extension of this standard to non-entitlement grantees would deny an entire class of Small Cities applicants comparable treatment.

Support of Assisted Housing

A new standard has also been added concerning eligible activities to reduce the development cost of certain multi-family housing projects which are considered to benefit low and moderate income persons. Currently, such activities are considered to address the low and moderate income benefit objective only if a majority of the units were available to such persons.

Experience has shown that for many grantees, the construction of new multi-family, non-elderly housing consisting of more than 50 percent assisted units has not been feasible for reasons involving both economic pressures and neighborhood concerns. Additionally, for the past several years, most such projects have required public subsidies to make them financially feasible regardless of the proportion of units assisted.

For these reasons and because both assisted housing program policies and the objectives of the Act encourage spatial deconcentration of housing opportunities for lower income persons, the Department has decided to consider the use of CDBG funds to reduce the development cost of non-elderly housing, where 20 percent or more of the units will be occupied by lower income persons, to address the objective of benefiting low and moderate income persons.

Other Changes

The provision currently included at § 570.302(d)(2)(ii) specifically authorizing activities designed to attract or retain neighborhood commercial facilities serving low and moderate income areas is being deleted as unnecessary. Such activities will be considered to benefit low and moderate income persons under the standard concerning an activity "which is so designed or so located that a majority of the beneficiaries are low and moderate income persons."

Elimination or Prevention of Slums or Blight

The standards used to qualify an activity as aiding in the prevention or elimination of slums or blight are being revised. Specifically, all provisions regarding Neighborhood Strategy Areas (NSAs) are being removed. Also, the Department recognizes that in some instances definitions of slums or blighted areas under State or local law are strictly written to meet the requirements of the earlier Urban Renewal Program, and might have the effect of unduly limiting the areas in which grant recipients would need to carry out slum or blight elimination and prevention activities. Accordingly, these standards allow other areas where there are objectively determinable signs of physical deterioration throughout the area to qualify as slums or blighted, even though the area may not meet a slum or blight definition under State or local law. Furthermore, the Standards continue to provide for activities necessary to complete Federally assisted urban renewal projects. For clarity, the provision is being revised to more clearly identify the activities covered by the provision.

Urgent Needs

The standards for determining whether activities qualify under the urgent needs objective are being modified in two ways. The new standard reflects the amendment to the Act which removed the requirement for a specific Secretarial determination, leaving only the need for a local certification. Also, the current standard contains a presumption that conditions that either developed or became critical within 18 months preceding application submittal were of recent origin. This presumption is considered to be unnecessary since the Secretary will no longer be required to make a prior determination in this matter, and thus the presumption is being removed.

Residential Rehabilitation Activities Under the Revised Standards

The deletion of the application approval process necessitates that these standards include special provisions for determining whether rehabilitation of residential structures qualifies under the national objectives. These special provisions are described below.

Under these review standards, residential rehabilitation carried out in three ways will be considered to meet the primary objectives:

Residential rehabilitation of any kind for low and moderate income households, carried out anywhere in the recipient's jurisdiction, will be considered to benefit low and moderate income persons if such assistance is limited to single-family structures occupied by low and moderate income households, or to multifamily structures where a majority of the units will be affordable to low and moderate income households after rehabilitation. The definition of affordability, for this purpose, is left to the recipient and may take into consideration the availability of rental assistance.

Residential rehabilitation carried out on any other structure which is located in a slum or blighted area and which is considered substandard by local definition, will be considered to prevent or eliminate slums or blight. At a minimum, the local definition must recognize any structure as substandard which does not meet Section 8 Existing housing quality standards. Under this standard, such substandard housing units can also receive CDBG assistance for general improvements provided that all deficiencies making the unit substandard are also corrected.

Finally, as before, residential rehabilitation benefiting higher income households carried out in non-blighted areas of the community, where such assistance is limited to correction of specific deficiencies detrimental to public health and safety, will also be considered to prevent or eliminate slums or blight.

In combination, these standards generally include residential rehabilitation assistance under almost the same circumstances as was authorized under current regulations. The principal exceptions are that units not qualifying as lower income, but located in an area to be upgraded, are now included only if the units are located in an area determined to be slum or blighted and if they are substandard pursuant to a local definition. Also, general improvements to such units would be included only if

all deficiencies rendering the units as substandard are also being corrected. These restrictions are considered necessary to minimize the possibility that block grant expenditures made under this objective will not actually be addressing the national objective of slums and blight prevention or elimination.

Area Benefit Activities

A new provision concerning area benefit activities specifies that activities of the same type serving different areas will be considered separately for purposes of determining compliance with the primary objectives. For example, funds might be used to make improvements to three neighborhood parks, each serving a different area. In determining whether such activities meet one of the national objectives, the area served by each park will be considered separately. Thus, improvements to an individual park which does not meet any one of the national objectives would not be in accordance with the primary objectives, even though a majority of park improvement activities in all locations met one or more of the national objectives.

Transition Provision

It is expected that, at the time the standards in this section become effective, some activities approved by HUD prior to 1982 will not yet be completed. Some of those activities may not be covered under the standards in this section. Furthermore, most entitlement grantees will already have begun obligation or expenditure of funds from their 1982 grants prior to the effective date of this section. A provision has therefore been included in this section to clarify how the provisions of current § 570.302(d), (e) and (f) will be used in reviewing such activities so as to mitigate potential adverse effects of the abrupt deletion of these subsections and the implementation of the standards in this section.

Other Information

This rule implements those changes in the CDBG program authorized by the HCD Act of 1980 and the HCD Amendments of 1981 and also includes revised provisions which provide greater flexibility to grantees. Fiscal Year 1982 funds are being provided to grantees in accordance with the HCD Act as amended. However, many Entitlement grantees will soon need to begin working on their new HAPs which must be approved by HUD in order for the grantees to receive Fiscal Year 1983 funds. Since these regulations include important changes in the HAP requirements, as well as in the provisions concerning the program's broad national objectives and eligible activities, the Secretary has determined that notice and prior public comment are impracticable and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible. However, public comments are invited and will be considered in the adoption of a final rule.

The Secretary also has determined that, for the reasons stated above, good cause exists for exempting this interim rule from the 30-day delay in effectiveness provided by the Administrative Procedure Act (5 U.S.C. 553(d)). However, section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs. The Secretary has requested such waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this interim rule, it is not known whether or when such waivers will be granted. Under section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principle that such inaction does not imply Congressional approval applies, *a fortiori*, to a waiver of the nature requested by the Secretary.

Under any circumstances, further notice of the effective date of this interim rule will be published in the **Federal Register.**

A Finding of No Significant Impact with respect to the environment is being made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is being developed in a manner that deregulates many provisions in prior regulations which established administrative requirements that exceed statutory requirements. The program provides ample funds to cover expenditures connected with the administrative costs of the program. These Subparts are applicable primarily to Entitlement communities that, by definition, are not small entities. Portions of this regulation, particularly Subpart C—Eligible Activities, are applicable to those small cities located in those few States that have not yet chosen to operate their own small cities program. There are only a few minor provisions in Subpart C which establish special administrative requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by this rule and their program numbers in the Catalog of Federal Domestic Assistance are as follows:

Community Development Block Grant Entitlement—14.218;
Community Development Block Grant Small Cities—14.219;
Urban Development Action Grant—14.221;
Secretary's Discretionary Fund/ Territories Program—14.225;
Secretary's Discretionary Fund/ Community Development Technical Assistance Grants—14.227; and
Community Development Block Grants/ State's Program—14.228 (only as specified).

OMB Control Number

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511),

the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The Authority for Part 570 is revised to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.)* and Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

1a. The Table of Contents to Subparts A, B, C, D, K, M and O of 24 CFR Part 570 is amended as follows:

Subpart A—General Provisions

Sec.
570.1 Purpose.
570.2 Primary objective.
570.3 Definitions.
570.4 Allocation and distribution of funds.
570.5 Waivers.

Subpart B—[Reserved]

Subpart C—Eligible Activities

570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible rehabilitation and preservation activities.
570.203 Special economic development activities.
570.204 Special activities by subrecipients.
570.205 Eligible planning and policy—planning—management—capacity building activities.
570.206 Eligible administrative costs.
570.207 Ineligible activities.

Subpart D—Entitlement Grants.

570.300 General.
570.301 Presubmission requirements.
570.302 Submission requirements.
570.303 Certifications.
570.304 Making of grants.
570.305 [Reserved.]
570.306 Housing assistance plan.
570.307 Urban counties.
570.308 Joint requests.
* * * * *

Subpart K—Other Program Requirements

570.600 General.
Sec.
570.601 Public Law 88–352 and Public Law 90–284; and Executive Order 11063.
570.602 Section 109 of the Act.
570.603 Labor standards.
570.604 Environmental standards.
570.605 National Flood Insurance Program.
570.606 Relocation and acquisition.
570.607 Employment and contracting opportunities.
570.608 Lead-based paint.
570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.
570.610 Uniform administrative requirements and cost principles.
570.611 Conflict of interest.
* * * * *

Subpart M—Loan Guarantees

570.700 Eligible applicants.
570.701 Eligible activities.
570.702 Application requirements.
570.703 Loan requirements.
570.704 Federal guarantee.
570.705 Applicability of rules and regulations.
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Subpart O—Program Management

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570.901 Review for compliance with primary objectives.
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2. Subpart A of Part 570 is revised to read as follows:

Subpart A—General Provisions

§ 570.1 Purpose.

(a) This Part describes policies and procedures applicable to the following programs authorized under Title I of the Housing and Community Development Act of 1974, as amended:

(1) Entitlement grants program (Subpart D);

(2) Small Cities program: HUD-administered CDBG nonentitlement funds (Subpart F);

(3) State's program: State-administered CDBG nonentitlement funds (Subpart I);

(4) Secretary's Fund program (Subpart E);

(5) Urban Development Action Grant program (Subpart G); and

(6) Loan Guarantees (Subpart M).

(b) Subparts A, C, J, K and O apply to all of the above programs administered by HUD but do not apply to the State's Program (Subpart I) except to the extent expressly referred to (as, for example, in § 570.4). (Until Subparts J, K and O are amended to more completely reflect the Housing and Community Development Amendments of 1981, they should be read as applying to the Entitlement grants program in a manner which recognizes the deletion of the application requirements for grants made in Federal Fiscal Year 1982 and thereafter.)

§ 570.2 Primary objective.

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.

§ 570.3 Definitions.

(a) "Act" means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

(b) "Age of housing" means the number of existing year-around housing units constructed in 1939 or earlier, based on data compiled by the United States Bureau of the Census referable to the same point or period of time, available from the latest decennial census except that the 1980 census data will not be used until Fiscal Year 1984.

(c) "Applicant" means a State, unit of general local government, or Indian tribe which makes application pursuant to the provisions of Subpart E, F, G or M.

(d) "Chief Executive Officer" of a State or unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of local government are: the elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of general local government;

(e) "City" means, for purposes of Entitlement grant and Urban Development Action Grant eligibility, (1) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (2) any other unit of general local government which is a town or township and which, in the determination of the Secretary (i) possesses powers and performs functions comparable to those associated with municipalities; (ii) is closely settled (except that the Secretary may reduce or waive this requirement on a case by case basis for the purposes of the Action Grant program); and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census, which have not entered into cooperation agreements with such town or township for a period covering at least 3 year to undertake or to assist in the undertaking of essential community development

and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the U.S. Bureau of the Census and information provided by the town or township and its included units of general local government. For purposes of urban development action grant eligibility only, "city" includes Guam, the Virgin Islands, and Indian tribes which are eligible recipients under the State and Local Government Fiscal Assistance Act of 1972 and located on reservations or in Alaskan Native Villages.

(f) "Discretionary grant" means a grant made from the Secretary's Fund in accordance with Subpart E.

(g) "Entitlement amount" means the amount of funds which a metropolitan city or urban county is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

(h) "Extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had a population growth rate, between 1960 and the date of the most recent population count available from the United States Bureau of the Census referable to the same point or period in time, equal to the population growth rate for such period of all metropolitan cities.

(i) "Extent of housing overcrowding" means the number of housing units with 1.01 or more persons per room as based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time, except that 1980 census data will not be used until Fiscal Year 1984.

(j) "Extent of poverty" means the number of persons whose incomes are below the poverty level based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period in time and the latest reports from the Office of Management and Budget. For purposes of this Part, the Secretary has determined that it is neither feasible nor appropriate to make adjustments at this time in the computations of "extent of poverty" for regional or area variations in income and cost of living.

(k) "HUD" means the Department of Housing and Urban Development.

(l) "Identifiable segment of the total group of lower income persons in the community" means female-headed households, and members of a minority group which includes Black, American Indian/Alaskan Native, Hispanic, Asian/Pacific Islander, and other groups normally identified by race, color, or national origin.

(m) "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

(n) "Low and moderate income families" or "lower income families" means families whose income do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

(o) "Low and moderate income person" or "lower income person" means members of a family or unrelated individuals whose incomes are within the income limits as defined in § 570.3(n).

(p) "Metropolitan area" means a metropolitan statistical area, as established by the Office of Management and Budget. An area which was classified as a metropolitan area under criteria in effect as of December 31, 1979 shall continue to be so classified through Fiscal Year 1983 if it continues to meet such criteria.

(q) "Metropolitan city" means (1) a city, within a metropolitan area, which is a central city of such area, as defined and used by the Office of Management and Budget (any such city which was classified as a central city as of December 31, 1979, shall continue to be so classified through Fiscal Year 1983), or (2) any other city, within a metropolitan area, which has a population of fifty thousand or more. Any city which had been classified as a metropolitan city because it has a population of a least fifty thousand will continue to be so classified through Fiscal Year 1982.

(r) "Nonentitlement amount" means the amount of funds which is allocated for use in a State's nonentitlement area as determined by formula set forth in section 106 of the Act.

(s) "Nonentitlement area" means an area which is not a metropolitan city or not included as part of an urban county.

(t) "Population" means the total resident population based on data compiled and published by the United States Bureau of the Census available from the latest census, or which has been upgraded by the Bureau to reflect the changes resulting from the Boundary and Annexation Survey, new incorporations, and consolidations of governments pursuant to § 570.4, and which reflects, where applicable, changes resulting from the Bureau's latest population determination through its estimating technique using natural changes (birth and death) and net migration, and is referable to the same point or period in time.

(u) "Secretary" means the Secretary of Housing and Urban Development.

(v) "State" means any State of the United States, or any instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

(w) "Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Community Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Community Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968.

(x) "Urban county" means any county within a metropolitan area which has qualified for a three year period, pursuant to § 570.307, and which, at the time of qualification, is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and (1) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities and Indian tribes therein) in such unincorporated areas and in its included units of general local government, (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation

agreements to undertake or to assist in the undertaking of essential community development and housing activities, or (2) has population in excess of one hundred thousand, a population density of five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of the Census. Any urban county (i) which qualified as an urban county in Fiscal Year 1981, (ii) the population of which includes all of the population of the county (other than the population of metropolitan cities therein), and (iii) the population of which for Fiscal Year 1982 falls below the amount required by paragraph (x)(2)(ii) of this section by reason of the 1980 decennial census shall be considered as meeting the population requirements of such clause for Fiscal Year 1982 and shall not be subject to the provisions of § 570.307 in that fiscal year.

(y) "Urban Development Action Grant" (UDAG) means a grant made by the Secretary pursuant to section 119 of the Act and Subpart G of this Part.

§ 570.4 Allocation and distribution of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as supplemented in this section.

(b) The definitions in § 570.3 shall govern in applying the policies and procedures described in sections 106 and 107 of the Act.

(c) In determining eligibility for entitlement and in allocating funds under sections 106 of the Act for any Federal Fiscal Year, the Department will recognize corporate status and geographical boundaries and the status of metropolitan areas and central cities effective as of July 1 preceding such Federal Fiscal Year, subject to the following limitations:

(1) With respect to corporate status, as certified by the applicable State and available for processing by the Census Bureau as of such date;

(2) With respect to boundary changes or annexations, as accepted for use by the Office of Revenue Sharing (ORS) for the same fiscal year and available for processing by the Census Bureau as of such date, except that any such boundary changes or annexations which result in the population of a unit of general local government reaching or exceeding 50,000 shall be recognized for this purpose whether or not such changes are accepted for use by the ORS; and,

(3) With respect to the status of Metropolitan Statistical Areas and central cities, as officially designated by the Office of Management and Budget as of such date.

(d) In determining whether a county qualifies as an urban county, and in computing Entitlement amounts for urban counties, the demographic values of population, proverty, housing overcrowding, and age of housing of any Indian tribes located within the county shall be excluded. In allocating amounts to States for use in nonentitlement areas, the demographic values of population, poverty, housing overcrowding, and age of housing of all Indian tribes located in nonentitled areas shall be excluded. It is recognized that all such data on Indian tribes is not generally available from the United States Bureau of the Census and that missing portions of data will have to be estimated. In accomplishing any such estimates the Secretary may use such other related information available from reputable sources as may seem appropriate, regardless of the data's point or period of time and shall use the best judgement possible in adjusting such data to reflect the same point or period of time as the overall data from which the Indian tribes are being deducted, so that such deductions shall not create an imbalances with that overall data.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.512, Grant closeouts, shall be considered as funds available for reallocation.

§ 570.5 Waivers.

The Secretary may waive any requirement of this Part not required by law whenever it is determined that undue hardship will result from applying the requirement or where application of the requirement would adversely affect the purposes of the Act.

3. Subpart B of Part 570 is removed and is being reserved for future use.

Subpart B—[Reserved]

4. Subpart C of Part 570 is revised to read as follows:

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determination of eligibility.* An activity may be financed in whole or in part with Community Development Block Grant (CDBG) funds only if all of the following requirements are met:

(1) *Compliance with section 105 of the Act.* Each activity must meet the eligibility requirements of section 105 of the Act as further defined in this Subpart.

(2) *Compliance with primary objectives.* The Act establishes as its primary objective the development of viable urban communities, including decent housing and a suitable living environment, and expanding economic opportunity, principally for persons of low and moderate income. For grant recipients under the Entitlement and HUD-administered Small Cities programs, this overall objective is achieved through a program where the projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the three broad national objectives of benefit to low and moderate income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. The choice of eligible activities on which block grant funds are to be expended represents the recipient's determination as to which approach or approaches will best serve these primary objectives. Consistent with the foregoing, each recipient under the Entitlement and HUD-administered Small Cities programs must ensure, and maintain evidence, that each of its CDBG funded activities meets one of the broad national objectives as contained in its certification.

(3) *Compliance with environmental review procedures.* The environmental review and clearance procedures set forth at 24 CFR Part 58 must be completed for each activity (or project), as applicable.

(4) *Other requirements.* Each activity must comply with all requirements of this Part as they may apply under Subparts D, E, F, and G.

(b) *Special policies governing facilities.* The following special policies apply to:

(1) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be provided with program funds even if it is part of a

multiple-use building containing ineligible uses, if:

(i) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(ii) The recipient can determine the cost attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable cost are limited to those attributable to the eligible portion of the building or facility.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities are not permitted.

(c) *Special assessments under the CDBG program.* The following policies relate to the use of special assessments under the CDBG program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of public facility improvement, such as streets, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes.

(2) *Special assessments to recover capital costs.* There can be no special assessment to recover that portion of a capital expenditure funded with CDBG funds. Recipients may, however, levy assessments to recover the portion of a capital expenditure funded from other sources. Funds collected through such special assessments are not program income.

(3) *Other uses of CDBG funds for special assessments.* Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low and moderate income persons when such assessments are used to recover that portion of the capital cost of public improvements financed from sources other than community development block grants, provided that:

(i) the assessment represent that property's share of the capital cost of the eligible facility or improvement; and

(ii) the installation of the public facilities and improvements was carried out in compliance with requirements applicable to activities assisted under this Part.

(d) *Consultant activities.* Consulting services are eligible for assistance under this Part for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the minimum daily rate of compensation for a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the Procurement Standards of Attachment O of OMB Circular No. A–102 and are not subject to the GS–18 limitation.

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this Subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(c)(1), 570.201(f), 570.202(b)(3), 570.203, 570.204, and 570.206(f). A written determination is also required for certain relocation costs under § 570.201(i).

(f) *Means of carrying out eligible activities.* Activities eligible under this Subpart may be undertaken, subject to local law, either;

(1) directly by the recipient's employees;

(2) by public agencies, including local public agencies and public housing authorities, designated pursuant to § 570.500;

(3) through procurement contracts with any public or private entity, whether profit or nonprofit, in accordance with the provisions of Attachment O of OMB Circular A–102; or

(4) through grant agreements between the recipient and subrecipients, including, but not limited to, the subrecipients described in § 570.204(c).

(g) *Limitation on planning and administrative costs.* The amount of funds that may be expended for planning and administrative costs, as defined in § 570.205 and § 570.206, which are allocable to each annual grant, shall not exceed 20 percent of the amount of such grant.

(h) *Reimbursement for pre-agreement costs.* Prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205(b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and other resources to residents pursuant to § 570.206(b), and for relocation and/or acquisition activities carried out pursuant to § 570.606. After the effective date of the grant agreement, the recipient may be reimbursed with funds from its grant to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part and 24 CFR Part 58.

(i) *Urban Development Action Grant.* Grant assistance may be provided with Urban Development Action Grant funds, subject to the provisions of Subpart G, for:

(1) Activities eligible for assistance under this Subpart; and

(2) Notwithstanding the provisions of § 570.207, such other activities as the Secretary may determine to be consistent with the purposes of the Urban Development Action Grant program.

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207(a).

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.506.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as

provided in § 570.207(a), carried out by the recipient of other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Nonprofit entities and subrecipients as specified in § 570.204 may acquire title to public facilities such as senior centers, centers for the handicapped, or neighborhood facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies of § 570.200(c) and the restrictions specified below.

(1) Parks, playgrounds, and recreational facilities established as a result of reclamation and other construction activities carried out in connection with a river and adjacent land, and flood and drainage facilities are eligible only where assistance has been determined to be unavailable under other Federal laws or programs. No CDBG funds may be obligated or expended for activities specified in this subparagraph until the recipient has complied with the following requirements:

(i) An application or written request has been made to the Federal agency that customarily funds the proposed activity within the recipient's jurisdiction; and

(ii) The application or request has been rejected, or the recipient has been advised that funds will not be made available for at least 90 days after the date of application or request, or there has been no response from the Federal agency after 45 days from the date of the application or request.

(2) The following facilities are eligible only when located in or serving areas where other community development activities have been or are being carried out:

(i) Parking facilities,

(ii) Fire protection facilities and equipment, and

(iii) Solid waste disposal, recycling or conversion facilities.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* (Effective date: This paragraph is effective as of the beginning of the recipient's program funded from Federal Fiscal Year 1982 and subsequent appropriations.) Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(1) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the statement. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(2) In each program year, the amount of funds obligated for public services, including services provided by subrecipients under § 570.204, shall not exceed 10 percent of the grant made to the recipient for that program year, except as provided in paragraph (e)(3) of this section.

(3) A recipient which allocated more than 10 percent of its grant for public services in its program funded from Federal Fiscal Year 1981 appropriations, may obligate more than 10 percent of its grant for public services in each of its program years funded from Federal Fiscal Years 1982, 1983, or 1984 appropriations so long as the amount obligated in any such program year does not exceed the amount allocated in Fiscal Year 1981. For the purposes of this provision, the Fiscal Year 1981 allocation is the amount specified for public service activities in the Cost Summary applicable to the program funded from Fiscal Year 1981 appropriations, as of October 1, 1981.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the recipient determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(i) the activities specified in subparagraph (1) above, except for the repair of parks and playgrounds;

(ii) for the clearance of streets, including snow removal and similar activities, and

(iii) the improvement of private properties.

All activities authorized under this subparagraph are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible under this Subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and assistance for permanently or temporarily displaced individuals, families, businesses, nonprofit organizations, and farm operations where: (1) Required under the provisions of § 570.606(a); and(2) relocation payments and assistance are determined by the recipient to be appropriate as provided in § 570.60d(b).

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be utilized for the relocation of individuals, and families displaced by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements. Further information

regarding the removal of architectural barriers is available in the current publication of the American National Standards Institute, Inc., ANSI A117.1.

(l) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements;

(2) Low income public housing and other publicly owned residential buildings and improvements; and

(3) Publicly owned nonresidential buildings and improvements otherwise eligible for assistance.

Specific information on historic properties is included in paragraph (d) of this section.

(b) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section:

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated if such financing is necessary or appropriate to achieve the recipient's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines;

(7) Costs of initial homeowner warranty premiums for rehabilitation carried out with CDBG funds;

(8) Costs of tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation; and

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section and under section 312 of the Housing Act of 1964, as amended.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation, and restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance.

(e) *Renovation of closed school buildings.* CDGB funds may be used to renovate closed school buildings for use as an eligible facility or to rehabilitate such buildings for housing.

§ 570.203 Special economic development activities.

A recipient may use CDGB funds for special economic development activities authorized under this section if it determines that such activities are necessary or appropriate to carry out an economic development project. Special economic development activities are permitted in addition to other activities authorized in this Subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing, except where new housing is part of a predominantly commercial or industrial project. Special economic development activities include:

(a) The acquisition, construction, reconstruction, or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the recipient, private nonprofit entities, or private for profit businesses.

(b) The provision of assistance to private for profit businesses, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any other activity necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a).

§ 570.204 Special activities by subrecipients.

(a) *Eligible activities.* The recipient may grant CDGB funds to any of the three types of subrecipients specified in paragraph (c) below, to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include:

(1) activities listed as eligible under this Subpart; and

(2) activities not otherwise listed as eligible under this Subpart, except those described as ineligible in § 570.207(a), when the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(b) *Recipient responsibilities.* Recipients under Subparts D, F, or G are responsible for ensuring that CDGB funds are utilized by subrecipients in a manner consistent with the requirements of this Part and other applicable Federal, State, or local law. Grantees are also responsible for carrying out the environmental review and clearance responsibilities.

(c) *Eligible subrecipients.* The following are subrecipients authorized to receive grants under this section.

(1) *Neighborhood-based nonprofit organizations.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDGB funds are to be carried out. A neighborhood is defined as:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(ii) an entire unit of general local government which is under 25,000 population; or

(iii) A new community as defined in § 570.403(a).

(2) *Section 301(d) Small Business Investment Companies.* A section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(3) *Local Development Corporations.* A local development corporation is:

(i) an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981);

(ii) an entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(iii) other entities incorporated under State or local law similar in purpose, function, and scope to those specified in (i) or (ii) above; or

(iv) a State development entity eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

§ 570.205 Eligible planning and policy—planning—management—capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and implementing actions, including, but not limited to:

(1) Comprehensive plans;

(2) Community development plans;

(3) Functional plans, in areas such as;

(i) Housing, including the development of a Housing Assistance Plan;

(ii) Land use;

(iii) Economic development;

(iv) Open space and recreation;

(v) Energy use and conservation;

(vi) Floodplain management in accordance with the requirements of Executive Orders 11988 and 11990;

(vii) Transportation;

(viii) Utilities; and

(ix) Historic preservation.

(4) Other plans and studies such as:

(i) Small area and neighborhood plans;

(ii) Capital improvements programs;

(iii) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§ 570.201–570.204);

(iv) The reasonable costs of environmental studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part.

(v) Strategies and action programs to implement plans, including development of codes, ordinances and regulations necessary to implement such plans; and

(vi) Support of clearinghouse functions.

(b) *Policy—planning—management—capacity building activities* which will enable the recipient to:

(1) determine its needs;

(2) set long-term goals and short-term objectives, including those related to environmental design;

(3) devise programs and activities to meet these goals and objectives;

(4) evaluate the progress of such programs and activities in accomplishing these goals and objectives;

(5) carry out management, coordination and monitoring of activities necessary for effective planning implementation.

§ 570.206 Eligible administrative costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed in whole or in part with funds provided under this Part and housing activities covered in the recipient's Housing Assistance Plan (HAP). Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of OMB Circular A–87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." All items of cost listed in Attachment B, Section C of that Circular, are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this Subpart. However, preagreement costs (item 6 of Section C) are limited to those costs described at § 570.200(h).

(a) *General management, oversight, and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation, and similar costs associated with management of multi-activity projects, but excluding activity delivery costs which are eligible as part of the cost of carrying out the activity under § 570.201 through § 570.204. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the recipient's staff, the staff of local public agencies, or other staff engaged in general management, coordination, monitoring, and evaluation;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies, and rental or purchase of office equipment.

(b) *The provision of information and other resources to residents* and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with CDBG funds.

(c) *Provision of fair housing counseling services* and other activities designed to further the fair housing objectives of Title VIII of the Civil Rights Act of 1968 and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower income persons.

(d) *Provision of assistance to facilitate performance and payment bonding* necessary for contractors carrying out activities assisted with CDBG funds including payment of bond premiums on behalf of contractors.

(e) *Administrative costs of urban homesteading program.* Reasonable costs relating to the administration of an urban homesteading program carried out under section 810 of the Housing and Community Development Act of 1974, as amended.

(f) *Submissions or applications for Federal programs.* Preparation of documents required for submission to HUD or States to receive funds under the CDBG and UDAG programs. In addition, CDBG funds may be used to prepare applications for other Federal programs where the recipient determines that such activities are necessary or appropriate to achieve its community development objectives.

(g) *Housing pre-construction costs.* Generally, the construction of new housing or direct financing of new housing is not an eligible use of CDBG funds, except as described in § 570.207(b)(3). However, CDBG funds may be used to pay necessary expenses,

prior to construction, in planning and obtaining financing for the new construction of housing for lower income persons. Activities may include:

(1) The cost of conducting preliminary surveys and analysis of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction pruposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable cost associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR Part 880–883; and

(4) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA).

(5) The cost of issuance of mortgage revenue bonds used to finance the construction of new housing for lower income persons, but excluding cost associated with the payment or gurantee of the principal or interest on such bonds.

§ 570.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 570.201–570.206 of this Subpart is ineligible to be carried out with CDBG funds. This section identifies two specific activities that are ineligible and provides guidance thought to be necessary in determining the eligibility of several other activities frequently associated with housing and comunity development.

(a) The following activities may not be carried out using CDBG funds:

(1) Buildings, or portions thereof used predominantly for the general conduct of government cannot be assisted with CDBG funds. Such buildings include, but are not limited to, city halls and other headquarters of government where the governing body of the recipient meets regularly, courthouses, jails, police stations, and other State or local government office buildings. This does not exclude, however, the removal of architectural barriers under § 570.201(k) and historic preservation under § 570.202(d) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be utilized in the provision of a building or facility for the general conduct of government the portion of the acquisition cost attributable to the land is eligible.

(2) *General government expenses.* Except as otherwise specifically authorized in this Subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this Part.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registraion. However, a facility originally financed in whole or in part with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be carried out with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.204.

(1) *Purchase of equipment.* The purchase of equipment with CDGB funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to Attachment B of OMB Circular A–87 for an otherwise eligible activity is an eligible use of CDGB funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c)(2).

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personalty not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or as part of a public service pursuant to § 570.201(e).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, where a public service is being assisted with CDBG funds, the cost of operating and maintaining that portion of the facility in which the service is located is eligible as part of the public service. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR Part 42; or,

(ii) When carried out by a subrecipient pursuant to § 570.204(a)(2).

For the purpose of this paragraph, activities in support of the development of low or moderate income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs set forth in § 570.206(g), are not considered as activities to subsidize or finance new residential construction.

(4) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include the following: payments for income maintenance, housing allowances, down payments, and mortgage subsidies.

5. Subpart D of Part 570 is revised to read as follows:

Subpart D—Entitlement Grants

§ 570.300 General.

This Subpart describes the policies and procedures governing the making of Community Development Block grants to Entitlement communities. The policies and procedures set forth in Subparts A,

C, J, K, and O of this Part also apply to Entitlement grantees.

§ 570.301 Presubmission requirements.

Prior to the submission to HUD for its annual grant, the grantee must:

(a) Develop a proposed statement of community development objectives and projected use of funds, including the following items:

(1) The community development objectives the grantee proposes to pursue; and

(2) The community development activities the grantee proposes to carry out with anticipated CDBG funds, including all funds identified in paragraph (b)(1) of this section, to address its identified community development objectives. Each such activity must address at least one of the three broad national objectives and be eligible pursuant to the provisions of Subpart C.

(b) Meet the following citizen participation requirements:

(1) Furnish citizens with information concerning the amount of CDBG funds expected to be available (including the annual grant, program income, surplus from urban renewal settlement, and proceeds from HUD guaranteed loans) for community development and housing activities, and the range of activities that may be undertaken with those funds;

(2) Hold at least one public hearing to obtain the views of citizens on the grantee's housing and community development needs; and

(3) Publish its proposed statement of community development objectives and projected use of funds so as to afford affected citizens an opportunity to examine the statement's contents, and to provide comments on the proposed statement and on the grantee's community development performance.

(c) Prepare its final statement of community development objectives and projected use of funds. Once the grantee has completed the citizen participation requirements in paragraph (b) of this section, the grantee must consider any such comments and views received and if the grantee deems appropriate modify the proposed statement. The grantee shall make the final statement available to the public. The final statement may include activities which do not either benefit low and moderate income persons or prevent or eliminate slums and blight only if the grantee identifies such activities in the final statement and certifies that such activities are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

§ 570.302 Submission requirements.

(a) *Content.* In order to receive its annual CDBG Entitlement grant, a grantee must submit the following:

(1) Standard Form 424;

(2) A copy of the grantee's final statement of community development objectives and projected use of funds, covering the same items as listed in § 570.301(a); and

(3) Certifications satisfactory to the Secretary covering all of the items listed in § 570.303.

(b) *Timing of submissions.* (1) In order to facilitate continuity in its program, the grantee should submit its final statement to HUD at least 30 days prior to the start of its community development program year, but in no event will HUD accept a submission for a grant earlier than December 1 or later than September 30 of the Federal Fiscal Year for which the grant funds are appropriated.

(2) A program year shall run for a twelve month period. A grantee may, however, either shorten or lengthen its program year, provided HUD receives written notice of a lengthened program year at least two months prior to the date the program year would have ended if it had not been lengthened.

§ 570.303 Certifications.

The grantee shall submit certifications that:

(a) It possesses legal authority to make a grant submission and to execute a community development and housing program;

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the grantee to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the grantee to act in connection with the submission of the final statement and to provide such additional information as may be required.

(c) Prior to submission of its final statement to HUD, the grantee has:

(1) Met the citizen participation requirements of § 570.301(b);

(2) Prepared its final statement of community development activities and projected use of funds in accordance with § 570.301(c) and made the final statement available to the public;

(d) The grant will be conducted and administered in compliance with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d *et seq.*); and,

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90–284; 42 U.S.C. 3601 *et seq.*).

(e) It has developed its final statement of projected use of funds so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight; the final statement of projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available;

(f) It is following a current housing assistance plan which has been approved by HUD pursuant to § 570.306.

(g) It will comply with the other provisions of the Act and with other applicable laws.

§ 570.304 Making of grants.

(a) *Acceptance of final statement and certifications.* The final statement and certifications will be accepted by the responsible HUD Field Office unless it is determined that one or more of the following requirements have not been met.

(1) *Completeness.* The submission shall include all of the components required in § 570.302(a).

(2) *Timeliness.* The submission must be received within the time period established in § 570.302(b)(1).

(3) *Certifications.* In the absence of independent evidence (which may, but need not, be derived from performance reviews and audits performed by the Secretary pursuant to section 104(d) of the Act) which tends to challenge in a substantial manner the certifications made by the grantee, such certifications will be deemed satisfactory to the Secretary if made in compliance with the requirements of § 570.303. If such independent evidence is available to the Secretary, however, the Secretary may require such further information of assurances to be submitted by the grantee as the Secretary may consider warranted or necessary in order to find the grantees certifications satisfactory.

(b) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(c) *Grant amount.* The Secretary will make a grant in the full Entitlement amount, generally within the last 30 days of the grantees' current program year unless:

(1) The final statement or certifications are not received by September 30 or are not acceptable under paragraph (a)(1) and (3) of this section, in which case the grantee will forfeit the entire entitlement amount; or

(2) The grantee's performance does not meet the standards prescribed in Subpart O and the grant amount is reduced.

(d) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and utilization of grant funds for activities will be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance standards described in Subpart O. In such case, the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions shall be specified. Failure to satisfy the condition may result in a reduction in the Entitlement amount pursuant to Subpart O.

§ 570.305 [Reserved]

§ 570.306 Housing assistance plan.

(a) *Purpose.* In its housing assistance plan (HAP), each metropolitan city and urban county surveys its housing conditions, assesses the housing assistance needs of its low and moderate income (lower income) households, specifies goals for the number of dwelling units and lower income households to be assisted, and indicates the general locations of proposed assisted housing for lower income persons.

(b) *Use.* A grantee's HAP is a basis upon which HUD approves or disapproves assisted housing in the grantee's jurisdiction and against which HUD monitors a grantee's provision of assisted housing.

(c) *Grantee's responsibility.* Each grantee is responsible for implementing its HAP expeditiously. This includes the timely achievement of goals for assisted housing. Each grantee is expected to use all available resources and, when needed, to take all actions within its control to implement the approved HAP. Performance under the HAP is one of the factors considered in grantee performance reviews conducted as provided in Subpart O of this Part. Subpart O also provides further requirements relating to the responsibility of the grantee in implementing its HAP.

(d) *General.* (1) The HAP consists of the five components described in paragraph (e). The HAP shall be submittee to HUD by an authorized representative of the grantee.

(2) Each city or county which expects to receive an Entitlement grant shall submit a HAP between September 1 and October 31 prior to its submission of the final statement required by § 570.302 of this Part. A grantee which has a three year goal which will be in effect for the fiscal year in which the final statement is to be submitted need only submit an annual goal and may incorporate by reference (to the extent that there have been on significant changes) the other required portions of the HAP.

(3) Any newly entitled community which was not made aware of its entitlement status by August 31 shall be considered unable to apply with the October 31 deadline and may submit an interim HAP in accordance with the requirements of paragraph (e)(6) of this section in lieu of the requirements of paragraphs (e)(1) through (e)(5).

(4) *For 1982 Only:* Each Entitlement grantee must submit a new HAP not later than December 31, 1982, or within 60 days of the effective date of these regulations, whichever is later.

(e) *Housing conditions, needs goals, and locations.—(1) Conditions.* The grantee shall describe the condition of the current housing stock in the community by providing a statistical profile by tenure type (renter and owner), which describes housing conditions by the number of occupied and vacant units in standard and substandard condition. The grantee shall develop its own definition of substandard housing which, at a minimum, shall include units which do not meet the Section 8 Existing Housing Quality Standards (24 CFR 882.109) and shall include such definition in its submission. In addition, the grantee shall identify the number of its occupied and vacant substandard housing units which it considers to be suitable for rehabilitation, and include its definition of suitable for rehabilitation in the HAP submission.

(2) *Needs.* (i) The grantee shall assess the housing assistance needs of lower income households currently residing in the community by tenure and by household type (elderly, small family and non-elderly individuals, and large family), including households expected to be involuntarily displaced by public and private action over the three year period of the HAP. The grantee shall also assess the housing assistance needs of lower income households that could reasonably be expected to reside in the community. Such households are those that could be expected to reside in the community as a result of existing and projected employment opportunities or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and the estimate shall consider changes in population known to have occurred since the last Census. For elderly households, the estimate of those that are expected to reside in the community must be based on the number known to be seeking assisted housing in the community or using the community's health services. In no case shall the estimate of all households expected to reside be less than zero.

(ii) A narrative statement accompanying the needs shall indicate the composition of the needs of lower income persons including separate numerical estimates, by tenure and household type, for households to be involuntarily displaced, households expected to reside, and total minority households. In addition, the narrative shall include a description which summarizes any special housing conditions and/or any special housing needs of particular groups of lower income households in the community. Such description shall include but need not be limited to, discussion of the special housing needs and/or conditions of:

(A) Individual minority groups;

(B) Impact of conversion of rental housing to condominium or cooperative ownership;

(C) Handicapped persons; and

(D) Single heads of household.

All handicapped single person households (elderly and nonelderly) must be included in the elderly category, but separately identified in the narrative. All other nonelderly handicapped persons must be included with small or large family households, according to the size of their households.

(3) *Three year goal.* (i) The grantee shall specify a realistic three year goal by tenure type for goals which are designed to improve the condition of the housing stock, and also by household type for the number of households to be assisted. The three year goal must be realistic in terms of estimating all assisted housing resources which can be expected to be available to the grantee. In addition, the grantee shall identify the maximum number of HUD assisted rental units it will accept during that three year period of each housing type (for example, new, rehabilitation, existing) in an amount at least equal to the total number of HUD assisted rental goals by household type.

(ii) Goals relating to improving the condition of the housing stock should be based on an evaluation of the data presented in the housing conditions

portion of the HAP as well as other current data available to the grantee.

(iii) The goals relating to households to be assisted must be proportional to need by household type within each tenure type, except that HUD may approve or require a different proportion in cases of:

(A) Disproportionate provision of assisted housing under a previous HAP;

(B) Significant displacement of a particular household type;

(C) Adjustments for projects of feasible size;

(D) Natural disaster; or

(E) Meeting the requirements of 105 (f) and (h) of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.).*

(iv) The majority of goals for the rehabilitation of dwelling units must assist lower income households. For this purpose, publicly assisted rehabilitation of a dwelling unit shall be deemed to assist a lower income household when the dwelling unit, after rehabilitation, is *owned and occupied by,* or if rented is *affordable to,* a lower income household.

(v) Each grantee shall include a narrative describing those *specific* actions which the grantee will take to address any special housing conditions or needs identified in § 570.306(e)(2)(ii) above as well as any actions determined necessary to ensure the timely achievement of its three year goals (including a discussion of any expected or known impediments and planned remedies).

(4) *Annual goal.* (i) The grantee shall specify an annual goal which must be realistic in terms of all assisted housing resources which can be expected to be available to the grantee; be established considering feasible project size; and constitute reasonable progress towards meeting the three year goal. In addition, the grantee shall indicate its preference for the distribution of HUD's assisted rental housing by housing type (for example, new, rehabilitation, existing).

(ii) In its annual goal, the grantee shall also describe the *specific* actions (including any new problems encountered and planned remedies) it will take during the year to meet its annual goal and, as appropriate, its three year goal. The grantee must also include a description of the provisions that it will make to assure that a majority of dwelling units to receive rehabilitation subsidy will assist lower income households.

(5) *General locations.* (i) A grantee having goals for new construction or substantial rehabilitation shall identify general locations of proposed projects with the objective of furthering community revitalization, promoting housing opportunity, enabling persons that are to be involuntarily displaced to remain in their neighborhoods, avoiding undue concentrations of assisted housing in areas containing high proportions of lower income persons, and assuring the availability of public facilities and services.

(ii) The grantee may, at its option, designate any of the general locations identified pursuant to (e)(5)(i) of this section as *High Priority* areas. (Under provisions of HUD's assisted housing ranking procedures, a higher rating can be obtained under the ranking criteria with respect to responsiveness of proposed projects to preferences and priorities of applicable HAPs.)

(iii) Each general location identified under paragraph (e)(5)(i) of this section must contain at least one site which conforms to the Departmental regulations and policies relating to the site and neighborhood standards established for the appropriate HUD assisted housing program.

(iv) Identification of the general locations must be accomplished by attaching a map to the HAP except that the HUD Field Office may accept a listing where it determines that the development of a map would present a hardship for the grantee.

(6) *Interim HAP.* A newly entitled grantee which has not been notified by HUD in sufficient time to meet the October 31 HAP submittal deadline shall submit an interim HAP at least 45 days prior to the submission of its final statement. Such submission shall include a narrative description of the condition of the housing stock; a narrative assessment of the housing assistance needs of lower income persons; a realistic annual goal indicating the number of dwelling units by housing type or lower income persons to be assisted during the balance of the fiscal year by housing type; and a listing of general locations of new construction and substantially rehabilitated housing for lower income persons. This HAP submission will be effective through September 30 of the year in which it is submitted.

(f) *Amendments to the HAP.* The grantee shall notify HUD within 45 days of any changes it makes to its HAP.

(g) *HUD review of HAPs, Interim HAPs, and Amendments.* HUD will review these HAP submissions to assure that the requirements of this regulation have been met, and will approve them unless the grantee's stated conditions and needs are plainly inconsistent with significant facts or data generally available; the grantee's proposed goals and activities are plainly inappropriate to meeting those conditions or needs; or the HAP fails to comply with other provisions of these regulations. Within 30 days of the date that the submission is received, HUD will notify the grantee in writing that the submission has been approved, disapproved, or that a final decision is still pending (in which case HUD may take no more than 30 additional days to decide whether to approve or disapprove the submission). In the event that HUD has not notified the grantee in writing within 30 days of receipt, the submission shall be considered fully approved.

§ 570.307 Urban counties.

(a) *Determination of qualification.* The Secretary will determine the qualifications of counties to receive entitlements as urban counties upon receipt of qualification documentation from counties at such time, and in such manner and form as prescribed by HUD. The Secretary shall determine eligibility and applicable portions of each eligible county for purposes of fund allocation under section 106 of the Act on the basis of information available from the U.S. Bureau of the Census with respect to population and other pertinent demographic characteristics, and based on information provided by the county and its included units of general local government.

(b) *Qualification as an urban county.* A county will qualify as an urban county if such county meets the definition at § 570.2(x). As necessitated by this definition, the Secretary shall determine which counties have authority to carry out essential community development and housing assistance activities in their included units of general local government without the consent of the local governing body and which counties must execute cooperation agreements with such units to include them in the urban county for qualification and grant calculation purposes.

(c) *Essential activities.* For purposes of this section, the term "essential community development and housing assistance activities" means community renewal and lower income housing activities, specifically urban renewal and publicly assisted housing. In determining whether a county has the required powers, the Secretary will consider both its authority and, where applicable, the authority of its designated agency or agencies.

(d) *Period of qualification.* (1) The qualification by HUD of an urban county shall remain effective for three successive federal fiscal years regardless of changes in its population

during that period, except as provided under paragraph (f) of this section.

(2) During the period of qualification, no included unit of general local government may withdraw from nor be removed from the urban county for HUD's grant computation purposes, and no unit of general local government covering additional area may be added to the urban county.

(3) If some portion of an urban county's unincorporated area becomes incorporated during the urban county qualification period, the newly incorporated area of the county shall remain a part of the urban county for the purpose of calculating the urban county grant amount, and shall be ineligible to apply for a separate grant under Subparts D or F, or to be a recipient of assistance under Subpart I of this Part.

(e) *Grant ineligibility of included units of general local government.* (1) An included unit of general local government cannot become eligible for an Entitlement grant as a metropolitan city during the period of qualification of the urban county (even if it becomes a central city of a metropolitan area or its population surpasses 50,000 during that period). Rather, such a unit of general local government shall continue to be included as an integral part of the urban county for the remainder of the urban county's qualification period, and no separate grant amount shall be calculated for the included unit.

(2) An included unit of general local government which is part of an urban county shall be ineligible to apply for grants under Subpart F, or to be a recipient of assistance under Subpart I, during the entire period of urban county qualification.

(f) *Failure of an urban county to receive a grant.* Failure of an urban county to receive a grant during any year shall terminate the existing qualification of that urban county, and that county shall requalify as an urban county before receiving an Entitlement grant in any successive Federal fiscal year. Such termination shall release units of general local government included in the urban county, in subsequent years, from the prohibition to receive grants under paragraphs (d)(3), (e)(1) and (e)(2) of this section. For this purpose an urban county shall be deemed to have received a grant upon having satisfied the requirements of sections 104 (a), (b) and (c) of the Act, without regard to adjustments which may be made to this grant amount under sections 104(d) or 111 of the Act.

(g) *Notifications of the opportunity to be excluded.* Any county seeking to qualify for an Entitlement grant as an urban county for any Federal fiscal year shall notify each unit of general local government which is located, in whole or in part, within the county and which would otherwise be included in the urban county, but which is eligible to elect to have its population excluded from that of the urban county, that it has the opportunity to make such an election, and that such an election, or the failure to make such an election, shall be effective for the three year period for which the county qualifies as an urban county. These notifications shall be made at least 60 days prior to the urban county's submission of documentation to HUD for qualification as an urban county. A unit of general local government which elects to be excluded from participation as a part of the urban county shall notify the county and HUD in writing no more than 45 days following receipt of such notification.

§ 570.308 Joint requests.

(a) *Joint requests and cooperation agreements.* (1) Any urban county and any metropolitan city located, in whole or in part, within that county may submit a joint request to HUD to approve the inclusion of the metropolitan city as a part of the urban county for purposes of planning and implementing a joint community development and housing program. Such a joint request shall only be considered if submitted at the time the county is seeking its three year qualification or requalification as an urban county. Such a joint request shall, upon approval by HUD, remain effective for the period for which the county is qualified as an urban county. An urban county may be joined by more than one metropolitan city, but a metropolitan city located in more than one urban county may only be included in one urban county for any program year. A joint request shall be deemed approved by HUD unless HUD notifies the city and the county of its disapproval and the reasons therefore within 30 days of receipt of the request by HUD.

(2) Each metropolitan city and urban county submitting a joint request shall submit an executed cooperation agreement to undertake or to assist in the undertaking of essential community development and housing assistance activities, as defined in § 570.307(c).

(b) *Joint grant amount.* The grant amount for a joint recipient shall be the sum of the amounts authorized for the individual Entitlement grantees, as described in section 106 of the Act. The urban county shall be the grant recipient.

(c) *Effect of inclusion.* Upon urban county qualification and HUD approval of the joint request and cooperation agreement, the metropolitan city shall be considered a part of the urban county for purposes of program planning and implementation for the period of the urban county qualification, and shall be treated the same as any other unit of general local government which is a part of the urban county.

(d) *Submission requirements.* In requesting a grant under this Part the urban county shall make a single submission which meets the submission requirements of this Subpart D and covering all members of the joint recipient.

6. Subpart K of Part 570 is revised to read as follows:

Subpart K—Other Program Requirements

§ 570.600 General.

(a) Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary, among other things, that the grant "will be conducted and administered in conformity with Pub. L. 88–352 and Pub. L. 90–284," and, further, that the grantee "will comply with the other provisions of this title and with other applicable laws." Section 104(d)(1) of the Act requires that the Secretary determine with respect to grants made pursuant to section 106(b) (Entitlement Grants) and 106(d)(2)(B) (HUD-Administered Small Cities Grants), at least on an annual basis, among other things, "whether the grantee has carried out [its] certifications in compliance with the requirements and the primary objectives of this title and with other applicable laws * * *" Certain other statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental departments or agencies other than the Secretary or the Department. This Subpart K enumerates laws which the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to States made pursuant to section 106(d) of the Act, for purposes of the determinations described above to be made by the Secretary under section 104(d)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has

enforcement responsibility. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws which the Secretary will treat as applicable to grants made to States under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(d)(2) of the Act, see § 570.496.

(b) This Subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (Subparts D and F of this Part, respectively), the requirements of this Subpart K are applicable to grants made pursuant to section 107 and 119 of the Act (Subparts E and G, respectively).

§ 570.601 Public Law 88-352 and Public Law 90-284, Executive Order 11063.

Section 104(b) of the Act provides that any grant under section 106 of the Act shall be made only if the grantee certifies to the satisfaction of the Secretary that the grant "will be conducted and administered in conformity with Pub. L. 88-352 and Pub. L. 90-284." Similarly, section 107 provides that no grant may be made under that section (Secretary's Discretionary Fund) or section 119 (UDAG) without satisfactory assurances to the same effect.

(a) "Public Law 88-352" refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 of the Civil Rights Act of 1964 directs each Federal department and agency empowered to extend Federal financial assistance to any program or activity by way of grant to effectuate the foregoing prohibition by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the statute authorizing the financial assistance. HUD regulations implementing the requirements of Title VI with respect to HUD programs are contained in 24 CRF Part 1.

(b) "Public Law 90-284" refers to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), popularly known as the Fair Housing Act, which provides that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, or national origin. Title VIII further requires the Secretary to administer the programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of Title VIII. Pursuant to this statutory direction, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing.

(c) Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing Executive Order 11063 are contained in 24 CFR Part 107

§ 570.602 Section 109 of the Act.

(a) Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds made available pursuant to the Act. For purposes of this section "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government or private contractor receiving community development funds or loans from the recipient. "Funded in whole or in part with community development funds" means that community development funds in any amount in the form of grants or proceeds from HUD guaranteed loans have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

(b) *Specific discriminatory actions prohibited and corrective actions.* (1) A recipient may not, under any program or activity to which the regulations of this Part may apply directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any facilities, services, financial aid or other benefits provided under the program or activity.

(ii) Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form from that provided to others under the program or activity.

(iii) Subject to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

(iv) Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(vi) Deny an opportunity to participate in a program or activity as an employee.

(2) A recipient may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(4)(i) In administering a program or activity funded in whole or in part with CDBG funds regarding which the

recipient has previously discriminated against persons on the ground of race, color, national origin or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program or activity funded in whole or in part with CDBG funds should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex. Where previous discriminatory practice or usage tends, on the ground of race, color, national origin or sex, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(iii) A recipient shall not be prohibited by this part from taking any action eligible under Subpart C to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to overcome prior discriminatory practice or usage.

(5) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(c) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

§ 570.603 Labor standards.

Section 110 of the Act requires that all laborers and mechanics employed by contractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. With respect to the labor standards specified in this section, the Secretary of Labor has the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 1332–15) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

§ 570.604 Environmental standards.

Section 104(f) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) . . . [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(f) of the Act and contained in 24 CFR Part 58. Section 104(f) also provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may under regulations provide for the release of funds for particular projects to grantees who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, and the other provisions of law specified by the Secretary as described above, that would apply to the Secretary were he/she to undertake such projects as Federal projects. Grantees assume such environmental review, decisionmaking, and action responsibilities by execution of grant agreements with the Secretary. The procedures for carrying out such environmental responsibilities are also contained in 24 CFR Part 58.

§ 570.605 National Flood Insurance Program.

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a)) of said Act (42 U.S.C. 4003(a)), on and after July 1, 1975 (or one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, whichever is later) for use in any area that has been identified by the Director of the Federal Emergency Management Agency (see Section 202 of Reorganization Plan No. 3 of 1978, 43 FR 41943) as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of the recipients' application (or, in the case of grants made under Subpart D, the date of submission of the grantees' final statement pursuant to § 570.302), funds provided under this Part shall not be expended on or after July 1, 1975, or one year after a community has been formally notified, whichever is later, for acquisition or construction purposes in an area so identified as having special flood hazards which is located in a community not in compliance with the requirements of the National Flood Insurance Program pursuant to section 201(d) of said Act (42 U.S.C. 4105(d)). The use of any funds provided under this part for acquisition or construction purposes in identified special flood hazard areas shall be subject to the mandatory purchase of flood insurance requirements of section 102(a) of said Act (42 U.S.C. 4012a).

§ 570.606 Relocation and acquisition.

(a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) (the "Uniform Act") provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a "State agency" (as defined in Section 101 of the Uniform Act, 42 U.S.C. 4601, and 24 CFR 42.85) (which includes any department, agency or instrumentality of a State or of a political subdivision of a State) under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any persons, unless he/she receives satisfactory assurance from such State agency that certain requirements of the Uniform Act with respect to relocation payments and assistance will be met. Such assurances will be provided in the grant agreement executed by the grantee (see § 570.304(b)). The requirements of the Uniform Act and HUD implementing regulations (24 CFR Part 42) apply to any acquisition of real property by a "State agency" that is carried out with the intention that such acquisition be for a community development activity

assisted under this Part and to the displacement of any family, individual, business, nonprofit organization, or farm that results from such acquisition.

(1) Any acquisition of real property by a "State agency" and any displacement resulting from such acquisition of real property shall be considered to be for an activity assisted under the CDBG program and to be subject to the regulations at 24 CFR Part 42 if the acquisition of displacement occurs on or after the date of the submission of the application requesting Federal financial assistance which is granted for an activity for which the acquisition has been or will be undertaken (or, in the case of a grant made pursuant to Subpart D, the date of submission of the grantee's final statement pursuant to § 570.302). However, if the recipient determines that any acquisition or displacement was not carried out for an assisted activity, and the HUD Area Office serving the locality concurs in that determination, such acquisition or displacement shall not be subject to these regulations. The recipient's request for HUD concurrence shall include its certification that at the time of the acquisition it did not intend to use the property for an assisted activity and appropriate documentation to establish that fact.

(2) The recipient or HUD, which shall monitor compliance with the Uniform Act, may determine that an acquisition prior to submission of an application for financial assistance (or final statement) and any resulting displacement were carried out for an assisted activity and are subject to these regulations. In the absence of such a determination by the recipient or HUD, any such acquisition or displacement occurring prior to submission of an application (or final statement) shall not be subject to these regulations. The recipient may at any time request a HUD determination as to whether or not such an acquisition and any resulting displacement are considered to be for an assisted activity and to be subject to these regulations. The request shall be submitted to the HUD Area Office and shall include appropriate background documentation.

(3) If the owner or occupant of a property disagrees with the recipient's determination that the Uniform Act and the regulations at 24 CFR Part 42 do not apply to the acquisition of the property or to a displacement resulting from the acquisition, he/she may file an appeal under 24 CFR Part 42 Subpart J (Appeals), whether or not the acquisition or displacement occurs before or after submission of the application for financial assistance (or final statement). The specific payments and other assistance for which an appeal may be filed are set forth in 24 CFR 42.703(a).

(4) The costs of relocation payments and assistance under Title II of the Uniform Act shall be paid from funds provided by this Part and/or such other funds as may be available by the locality from any source.

(b) Pursuant to section 105(a)(11) of the Act, the grantee may also provide relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced by an activity that is not subject to the Uniform Act, and also may provide relocation payments and other assistance at levels above those established under the Uniform Act. Unless such payments and assistance are made pursuant to State or local law, the recipient shall make such payments only upon the basis of a written determination that such payments are appropriate (see § 570.201(i)) and shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacees.

(c) Section 305 of the Uniform Act (42 U.S.C. 4655) provides that the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property unless he receives satisfactory assurances from such State agency that (1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 of the Uniform Act (42 U.S.C. 4651) and the provisions of section 302 thereof (42 U.S.C. 4651) and (2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of the Uniform Act (42 U.S.C. 4653, 4654). Appropriate assurances to such effect will be provided in the grant agreement executed by the grantee.

§ 570.607 Employment and contracting opportunities.

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible opportunities for training and employment be given to lower income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Grantees shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR Part 135 are not directly applicable to activities assisted under this Part but may be referred to as guidance indicative of the Secretary's view of the statutory objectives in other contexts.

§ 570.608 Lead-based paint.

(a) Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this Part.

(b) Section 302 of the Lead-Based Poisoning Prevention Act (42 U.S.C. 4822) directs the Secretary to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Pursuant to such authority and the Secretary's general rulemaking authority, the Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C, and requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1950 at 24 CFR Part 35, Subpart A. The requirements of 24 CFR Part 35, Subpart A, are applicable to purchasers and tenants of residential structures constructed prior to 1950 and assisted under this Part, and the requirements of 24 CFR Part 35, Subpart C, are applicable to existing residential structures which are rehabilitated with assistance provided under this Part.

§ 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of,

or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24. "Subrecipients" are either eligible entities under § 570.204(c) or private entities assisted under § 570.202(b)(1).

§ 570.610 Uniform administrative requirements and cost principles.

The recipient shall comply with the policies, guidelines, and requirements of OMB Circular Nos. A–102, Revised, A–110, A–87, and A–122 as they relate to the acceptance and use of Federal funds under this Part.

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in Attachment O of OMB Circulars A–102, and A–110, respectively, shall apply.

(2) In all cases not governed by Attachment O of the OMB Circulars, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, its designated public agencies, or subrecipients under § 570.204, to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, construction and other improvements of private properties or facilities pursuant to § 570.203, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to §§ 570.204 or 570.455.

(b) *Conflicts prohibited.* Except for approved eligible administrative or personnel costs, the general rule is that no persons described in paragraph (c) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this Part or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such interest or benefit during, or at any time after, such person's tenure.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204, which are receiving funds under this Part.

(d) *Exceptions: threshold requirements.* Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

7. Subpart M of Part 570 is revised to read as follows:

Subpart M—Loan Guarantees

§ 570.700 Eligible applicants.

(a) Units of general local government entitled to receive basic grant amounts under section 106 of the Act (metropolitan cities and urban counties) may apply for loan guarantee assistance under this Subpart.

(b) Public agencies may be designated by eligible units of general local government to receive a loan guarantee on notes or other obligations issued by the public agency in accordance with this Subpart. In such case the applicant unit of general local government shall be required to pledge its current and future grants under Title I as security for the notes or other obligations issued by the public agency.

§ 570.701 Eligible activities.

Loan guarantee assistance under this Subpart may be utilized for the following activities undertaken by the unit of general local government or its designated public agency, provided such activities are otherwise eligible under the provisions of § 570.201 through § 570.203.

(a) Acquisition of improved or unimproved real property, including acquisition for economic development purposes.

(1) Acquisition for economic development purposes may include agreements for the purchase of real property to be improved by the seller prior to the acquisition. Obligations to purchase under such agreements may be contingent on the procurement of interim financing by the seller, and may provide for a leaseback of the improved property to the seller, including an option to purchase after full repayment of the loan guaranteed under this Subpart.

(2) In the purchase of real property pursuant to paragraph (a)(1) of this section, the assisted activity includes the acquisition and/or improvements undertaken by the seller in whole or in part with interim financing obtained in reliance on the obligation to purchase the improved property with guaranteed loan funds. The Agreement described in paragraph (a)(1) of this section shall specify that the obligation to purchase is contingent on compliance in the undertaking of interim financed activities with the requirements applicable to activities assisted under this Subpart.

(b) Rehabilitation of real property owned or acquired by the unit of general local government or its designated public agency.

(c) Payment of interest on obligations guaranteed under this Subpart.

(d) Relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced as a result of activities financed with loan guarantee assistance.

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public improvements, utilities, or facilities (other than buildings) related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

§ 570.702 Application requirements.

(a) *Presubmission requirements.* (1) Prior to submission of an application for loan guarantee assistance to HUD, the applicant must comply with the presubmission requirements specified in § 570.301 with respect to the activities proposed for loan guarantee assistance.

(2) If an application for loan guarantee assistance is simultaneous with the applicant's submission for its entitlement grant, the applicant may utilize the statement of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 by including and identifying the activities to be undertaken with the guaranteed loan funds.

(b) *Submission requirements.* An application for loan guarantee assistance shall be submitted to the appropriate HUD Area Office and shall consist of the following:

(1) A copy of the applicant's final statement of community development objectives and projected use of guaranteed loan funds.

(2) A schedule for repayment of the loan which identifies the sources of repayment.

(3) A certification providing assurance that the applicant possesses legal authority to make the pledge of grants required under § 570.703(b)(2).

(4) Certifications required pursuant to § 570.303. For the purposes of this requirement, the terms "grant" and "CDBG" in such certifications shall also mean loan guarantee.

(c) *Economic feasibility and financial risk.* The Secretary will make no determination with respect to the economic feasibility of projects proposed to be funded with the proceeds of guaranteed loans; such determination is the responsibility of the applicant. In determining whether a loan guarantee constitutes an acceptable financial risk, the Secretary will consider the applicant's current and future entitlement block grants as the primary source of loan repayment. Approval of a loan guarantee under this Subpart is not to be construed, in any way, as indicating that HUD has agreed to the feasibility of a project beyond recognition that block grant funds should be sufficient to retire the debt.

(d) *HUD review and approval of applications.* (1) HUD will normally accept the grantee's certifications. The Secretary reserves the right, however, to consider relevant information which challenges the certifications and to require additional information or assurances from the grantee as warranted by such information.

(2) The Area Office shall review the application for compliance with requirements specified in this Subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) The Secretary may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) The Secretary determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The applicant's status as a metropolitan city or urban county during the proposed repayment period; and

(D) The applicant's ability to furnish adequate security pursuant to § 570.703(b).

(ii) The guarantee requested exceeds the maximum loan amount specified under § 570.703(a).

(iii) Funds are not available in the amount requested.

(iv) The applicant's performance does not meet the standards prescribed in § 570.909.

(v) Activities to be undertaken with the guaranteed loan funds are not listed as eligible under § 570.201 through § 570.203 and § 570.701 (a) through (f).

(4) The Secretary will notify the applicant in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the applicant shall be informed of the specific reasons for reduction or disapproval. If the request is approved, the Secretary shall issue an offer of commitment to guarantee obligations of the applicant or the designated public agency subject to such conditions as the Secretary may prescribe, including the conditions for release of funds described in paragraph (e).

(e) *Environmental review.* The applicant shall comply with HUD environmental review procedures (24 CFR Part 58) leading to certification for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of applicants.

For the purposes of this paragraph, the "release of funds" shall be deemed to occur at the time of guarantee of notes or other obligations by the Secretary.

§ 570.703 Loan requirements.

(a) *Maximum loan amount.* No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the total outstanding notes or obligations guaranteed under this Subpart on behalf of the applicant and each public agency duly designated by the applicant would thereby exceed an amount equal to three times the amount of the entitlement grant made pursuant to § 570.304 to the applicant.

(b) *Security requirements.* To assure the repayment of notes or other obligations and charges incurred under this Subpart and as a condition for receiving loan guarantee assistance, the applicant (or the applicant and designated public agency, where appropriate) shall:

(1) Enter into a contract with HUD, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) Pledge any grant made or for which the applicant may become eligible under this Part; and

(3) Furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this Part or disposition proceeds from the sale of land or rehabilitated property.

(e) *Use of grants for loan repayment.* Notwithstanding any other provision of this Part:

(1) Grants allocated to an applicant under this Part (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be authorized by the Secretary) on the notes or other obligations guaranteed pursuant to this Subpart.

(2) The Secretary may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the note or other obligation guaranteed pursuant to this Subpart, or to the purchase of such obligation, in accordance with the terms of the contract required by paragraph (b)(1) of this section.

(d) *Debt obligations.* Notes or other obligations guaranteed pursuant to this Subpart shall be in the form and denominations prescribed by the Secretary. Such notes or other obligations shall be issued and sold only to the Federal Financing Bank under such terms as may be prescribed by the Secretary and the Federal Financing Bank.

(e) *Taxable obligations.* Interest earned on obligations guaranteed under this Subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

All applicants or designated public agencies issuing guaranteed obligations must bear the full cost of interest.

(f) *Loan repayment period.* As a general rule, the repayment period for a loan guaranteed under this Subpart shall be limited to six years. However, a longer repayment period may be permitted in special cases where it is deemed necessary to achieve the purposes of this Part.

§ 570.704 Federal guarantee.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this Subpart. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

§ 570.705 Applicability of rules and regulations.

The provisions of Subparts A, C, D, J, K and O shall apply to this Subpart, except to the extent they are specifically modified or augmented by the provisions of this Subpart.

8. Subpart O of Part 570 is amended by adding § 570.901 to read as follows:

Subpart O—Program Management

§ 570.901 Review for compliance with primary objectives.

(a) *General.* The Secretary will review each applicable grantee's performance to determine whether the grantee has complied with the requirements under § 570.200(a)(2).

(b) *Standards.* In determining whether each of the grantee's funded activities meets one of the broad national objectives contained in its certification, the Secretary will consider whether the activity falls within one of the following standards:

(1) *Activities benefiting low and moderate income persons.* The following activities, in the absence of substantial evidence to the contrary, will be considered to benefit low and moderate income persons:

(i) Any activity, other than residential rehabilitation, which is so designed or so located that at least a majority of the beneficiaries are low and moderate income persons. The following are examples of activities which meet this standard:

(A) An activity, other than residential rehabilitation, which serves an area, delineated by the recipient, where a majority of the residents are low and moderate income persons. Such an area need not be coterminous with census tract boundaries.

(B) Economic development activities designed to create or retain permanent jobs, the majority of which are available or will be available to low and moderate income persons. Jobs are considered to be available to low and moderate income persons based on the nature and extent of the skills, education, and experience required to qualify for the jobs, training opportunities which would make such jobs available to low and moderate income persons who would not otherwise qualify, advertising and recruiting efforts directed toward low and moderate income persons, and the accessibility of the jobs to areas where substantial numbers of low and moderate income persons reside.

(C) A facility, such as a senior center, which is used principally by low and moderate income persons.

(D) An activity which has income eligibility requirements that limit the benefits of the activity to low and moderate income persons.

(ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

(iii) An activity which must be carried out prior to or as an integral part of an activity which will principally benefit low and moderate income persons, where the cost of the assisted activity is not unreasonable in relation to the low and moderate income benefit to be provided. An example is the extension of water and sewer lines to permit construction of lower income housing.

(iv) Rehabilitation of: (A) single-family residential structures occupied by low and moderate income households; or

(B) multi-family residential structures where more than half of the rehabilitated units in each structure are occupied by low and moderate income households.

Since rental units might not be occupied by the same households after rehabilitation as before rehabilitation, rental units affordable to low and moderate income households after rehabilitation will be considered occupied by such households for the purpose of meeting this standard. For purposes of this provision, rental units affordable to low and moderate income households shall be as determined by the grantee. The grantee shall maintain in its records the criteria used in making its determination.

(v) For metropolitan cities and urban counties, economic development activities funded for the primary purpose of creating or retaining jobs, where the city or county:

(A) meets the minimum standards of physical and economic distress of the Urban Development Action Grant program, described at § 570.452(b); and

(B) meets or exceeds at least three of the following UDAG minimum distress criteria: Unemployment; Per Capita Income; Poverty; and Job Lag.

An activity will qualify under this standard if the recipient met the provisions of subparagraphs (A) and (B) as of the date CDBG funds were contractually obligated or no more than six months prior to such date of obligation.

(vi) An eligible activity to reduce the development cost of the new construction of a multifamily non-elderly housing project where at least 20 percent of the units will be occupied by low and moderate income persons.

(2) *Activities which aid in the prevention or elimination of slums or blight.* The following activities, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(i) Any activity which is carried out in and designed to upgrade an area:

(A) meeting a definition of slum, blighted, deteriorated, or deteriorating area under State or local law; or

(B) where there are objectively determinable signs of physical deterioration throughout the area;

except that residential rehabilitation will be considered to meet this standard only where each structure rehabilitated is considered substandard under local definition before rehabilitation. At a minimum this definition must include units which do not meet the Section 8 Existing Housing Quality Standards (24 CFR 882.109). Also, in cases where all deficiencies making a structure substandard have been eliminated, this standard includes assistance for less critical work on that structure. (Note: Despite this restriction, any rehabilitation activity which benefits low and moderate income households, as described in paragraph (b)(1)(iv) of this section, can be undertaken without regard to the area in which it may be located.)

Formal designation of a slum or blighted area is not required for this purpose, but evidence supporting the local determination that an area meets the criteria shall be maintained by the recipient.

(ii) Acquisition, demolition, rehabilitation, relocation, and historic preservation activities designed to eliminate specific conditions of blight or physical decay on a spot basis anywhere in the recipient's jurisdiction. Under this standard, rehabilitation for other than lower income households is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(iii) Activities included in the urban renewal plan most recently approved by HUD under Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 *et seq.*) which are necessary to complete an urban renewal project.

(3) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this standard if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available.

(c) *Area benefit activities.* For purposes of determining compliance with the primary objectives, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(d) *Planning and administrative costs.* Program funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the primary objectives.

(e) *Transition provision*—(1) *Continuation of projects fundable under past rules.* Activities carried out with CDBG funds from any year (including those carried out with funds awarded in Federal Fiscal Year 1982 and thereafter) which are integral components of projects approved by HUD in program years 1979, 1980 and 1981 will be considered to address the primary objectives if such projects meet the criteria set forth at 24 CFR 570.302 (d), (e) or (f) under regulations published on August 27, 1979 (44 FR 50261).

(2) *Activities funded from Fiscal Year 1982 Appropriations.* Those activities for which CDBG funds are expended or contractually obligated during the recipient's FY 1982 program year will be considered to address the primary objectives if such activities meet the criteria set forth at 24 CFR 570.302 (d), (e), or (f), under regulations published on August 27, 1979 (44 FR 50261). Activities for which funds are expended or contractually obligated on or after the effective date of this section will also be considered to address the primary objectives if such activities meet the standards of this section.

(f) *Determination of failure to address primary objectives.* If HUD determines that an activity does not meet any of the standards outlined above, the recipient will be notified and provided a reasonable opportunity to demonstrate to the satisfaction of the Secretary that the activity addresses one of the broad national objectives. Failure to so demonstrate will be cause for HUD to find that the recipient has failed to carry out such activities in accordance with the primary objectives of the Act.

Dated: September 14, 1982.

Stephen J. Bollinger,

Assistant Secretary for Community Planning and Development.

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