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federal register

Monday
February 28, 1983

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Environmental Protection Agency

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Coast Guard

Cargo Vessels
Coast Guard

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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Railroads
Interstate Commerce Commission

Savings and Loan Associations
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 904, 916, and 917

Expenses and Rates of Assessment for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses of the California Grapefruit Administrative Committee functioning under Marketing Order 904 and increases expenses of the Nectarine Administrative and Pear Commodity Committees functioning under Marketing Orders 916 and 917, respectively. Funds to administer these programs are derived from assessments on handlers regulated under the orders.

EFFECTIVE DATES: March 1, 1982–February 28, 1983 (§§ 916.221, 917.232). September 1, 1982–August 31, 1983 (§ 904.202).

FOR FURTHER INFORMATION CONTACT: W. J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been classified a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by the Committees established under their respective marketing orders, and upon other information. It is found that the expenses and rates of assessment, as hereinafter provided, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking and good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The orders require that the rates of assessment for a particular fiscal period shall apply to all assessable fruit handled from the beginning of such period. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. It is necessary to effectuate the declared policy of the Act to make these provisions effective as specified, and handlers have been apprised of such provisions, and the effective time.

List of Subjects

7 CFR Part 904

Marketing agreements and orders, California, Grapefruit.

7 CFR Part 916

Marketing agreements and orders, California, Nectarines.

7 CFR Part 917

Marketing agreements and orders, California, Pears, Peaches, Plums.

Therefore, § 904.201 is removed and new § 904.202 is added and §§ 916.221 and 917.232 (47 FR 34351) are revised to read as follows: (The following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations.)

PART 904—GRAPEFRUIT GROWN IN A DESIGNATED AREA IN CALIFORNIA

§ 904.202 Expenses and assessment rate.

Expenses of $154,452.13 by the Committee are authorized, and an assessment rate of $0.04 per 32-pound carton of grapefruit is established for the fiscal year ending August 31, 1983. Unexpended funds may be carried over as a reserve.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.221 Expenses and assessment rate.

Expenses of $2,000,000 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.15 per No. 22D standard lug box of nectarines is established for the fiscal year ending February 28, 1983; and unexpended funds may be carried over from the fiscal year ended February 28, 1982.

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

§ 917.232 Expenses and assessment rate.

Expenses of $718,684 by the Pear Commodity Committee are authorized, and an assessment rate of $0.16 per No. 29B special lug box of pears is established for the fiscal year ending February 28, 1983.

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

Dated: February 22, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-4957 Filed 2-25-83; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Northwest Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Northwest Airlines, Inc. to the listing of carriers which have entered into agreements with the Service for the preinspection of their passengers and crews at locations outside the United States.

EFFECTIVE DATE: January 27, 1983.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service has entered into an agreement with Northwest Airlines, Inc. to provide for the preinspection of its passengers and crews as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crews upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds an air carrier to the present listing and is editorial in nature.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Airlines, Aliens, Government contracts, Inspections.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.4 [Amended]

Section 238.4 is amended by adding in alphabetical order, "Northwest Airlines, Inc.", under "At Calgary."

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: February 18, 1983.

Perry A. Rivkind,

Associate Commissioner, Management, Immigration and Naturalization Service.

[FR Doc. 83-5044 Filed 2-25-83; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Teletherapy Room Radiation Monitors and Inspection and Servicing of Teletherapy Source Exposure Mechanisms

Correction

In FR Doc. 83-1379 beginning on page 2115 in the issue of Tuesday, January 18, 1983, make the following correction.

On page 2117, third column, § 35.27, ninth line, "export's" should read "expert's".

BILLING CODE 1505-01-M

10 CFR Parts 50 and 70

Regional Licensing Reviews

Correction

In FR Doc. 83-3326 beginning on page 5886 in the issue of Wednesday, February 9, 1983, make the following corrections.

On page 5887, first column, § 70.32 (c)(1), eighth line from the bottom, "discribed" should read "described"; second column, paragraph (d), sixth line, "§ 80.22(g)" should read "§ 70.22(g)"; third column, paragraph (g), eighth line, "licensees" should read "licensee"; and in the sixth line from the bottom, "70.30(g)" should read "73.30(g)".

BILLING CODE 1505-01-M

10 CFR Part 140

Modification of Indemnity Agreements

Correction

In FR Doc. 83-625 beginning on page 1029 in the issue of Monday, January 10, 1983, make the following correction.

On page 1030, second column, in the Authority Citation, second paragraph, last line, "905" should read "950".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 572

[No. 83-87]

Net Worth Certificates; Regulatory Net Worth

February 18, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") has amended its regulations implementing the Net Worth Certificate Act, Title II, Pub. L. 97-320, 96 Stat. 1469 (October 15, 1982), to provide that, once the Federal Savings and Loan Insurance Corporation ("FSLIC") purchases net worth certificates ("NWCs") from a qualified institution, the FSLIC is committed, under certain specified circumstances, to purchase additional NWCs from that institution. In addition, the Board has amended its definitions of regulatory net worth, 12 CFR 561.13, to include amounts of NWCs which the FSLIC is committed to purchase. Also, the Board has extended the date by which an initial application for a purchase of NWCs by the FSLIC is required to be filed. Finally, the Board states its views regarding the exemption for NWC issuers from State or local taxes determined on the basis of deposits held or interest paid on such deposits. These amendments are intended to promote a more efficient administration of the NWC program.

EFFECTIVE DATE: February 18, 1983.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Deputy Director, Policy and Programs (202-377-6480) or James A. Kristufek, Capital Assistance Program Administrator (202-377-6363), Office of Examinations and Supervision, or Thomas J. Haggerty, Senior Attorney, Division of Securities and Corporate Analysis, Office of General Counsel, (202-377-6911), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Home Loan Bank Board ("Board") in Resolution No. 82-793, dated December 8, 1982, 47 FR 58215 (1982), adopted regulations to implement the Net Worth Certificate Act, Title II of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469 (October 15, 1982) ("DIA").

Upon further consideration of the procedure specified by those regulations, the Board has determined that a more efficient implementation of its net worth certificate ("NWC") program can be accomplished by providing, in certain circumstances, a Federal Savings and Loan Insurance Corporation ("FSLIC") commitment to purchase additional NWCs from a qualified institution once it has made a determination of eligibility for that institution.

In addition, since the Board has not been able to make available as quickly as it anticipated the application forms by which an institution may request the FSLIC to purchase NWCs and the NWC Master Agreement, it is necessary to extend the initial filing date for NWC applications.

II. Regulatory Amendments

The Board has redesignated existing paragraphs as appropriate and adopted a new paragraph (c) of § 572.1 and new paragraphs (d) and (i) of § 572.3 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations")

(12 CFR 572.1), to provide that, once the FSLIC determines an institution's eligibility to sell NWCs allocable to operating losses for the applicable period during which the institution filed an NWC application, the FSLIC is committed to purchase NWCs from that institution in the amount computed under § 572.1(d) as allocable to operating losses for that applicable period. The amount of this commitment, however, does not include any amount of NWCs that would be allocable to operating losses determined by the FSLIC to have been occasioned by mismanagement, by speculation in futures or forward contracts, by excessive operating costs, or by management actions designed for the purpose of obtaining assistance. Actual purchases of NWCs by the FSLIC will still be made on the six-month basis set forth in the regulations and after an application requesting such purchase is filed.

The following example explains the NWC application procedure as modified by this amendment. A qualified institution having a calendar fiscal year could request the FSLIC to purchase NWCs allocable to the institution's operating losses for its six-month period ended December 31, 1982, (the immediately preceding applicable period) by the filing of a Form 1286 on or before March 1, 1983. Pursuant to new paragraph (d) of § 572.3, that Form 1286 would also be deemed to request the FSLIC to purchase NWCs allocable to that institution's current six-month period, ending June 30, 1983. Accordingly, the FSLIC will make two determinations on the basis of the Form 1286 application. It will decide whether to purchase NWCs allocable to the institution's six-month period ended December 31, 1982, and whether to commit to purchase NWCs from that institution based on the institution's operating losses for the current six-month period ending June 30, 1983. If, in accordance with new paragraph (i) of § 572.3, the FSLIC commits to purchase NWCs from the institution based on its operating losses for the current period, the institution still must file a Form 1287 within 30 days after the close of that current period on June 30, 1983, in order to justify the amount of NWCs to be purchased by the FSLIC. In addition to relating to the then immediately preceding applicable period ended on June 30, 1983, that Form 1287 would also be deemed to request the FSLIC to purchase NWCs based on the institution's operating losses for the new current applicable period ending December 31, 1983.

The Board also has amended its definition of regulatory net worth, § 561.13 of the Insurance Regulations (12 CFR 561.13), to include amounts of NWCs which the FSLIC is committed to purchase from an institution pursuant to § 572.1(c). The Board has been advised by its Office of Examinations and Supervision that it is appropriate for an institution to accrue the amount of that NWC commitment under generally accepted accounting principles.

Other appropriate conforming amendments have been made to Part 572 of the Insurance Regulations in order to provide for this commitment obligation within the structure of the net worth certificate program. Among these conforming changes the Board has changed its policy statement, § 572.1 of the Insurance Regulations, to a regulation to reflect that that section now commits the FSLIC to certain action.

Finally, the Board has amended § 572.3(c) of the Insurance Regulations to permit applications for NWCs to be filed until March 1, 1983. Thereafter, the section requires the filing of an application within 30 days after the close of an applicable period.

III. DIA Tax Exemption

The Board is taking this opportunity to state its view regarding the tax exemption provision set forth in new section 406(f)(5)(I) of the National Housing Act, adopted by section 202(a) of the DIA. In the Board's opinion, the DIA contemplates that no State or local tax determined on the basis of deposits or interest paid on deposits should be required from a qualified institution with respect to (1) a period during which that institution sustained operating losses that are recompensed in part by the FSLIC's purchase of NWCs, and (2) future periods so long as the NWCs remain outstanding. It would be inappropriate and incongruous for the FSLIC to provide financial assistance to an institution on the basis of that institution's financial condition and results of operation for a period when by virtue of the State or local tax provisions applicable to that period that assistance, in effect, would pay those State or local taxes.

Regulatory Analysis

The elements of regulatory analysis for major regulations required by Board Resolution No. 80-584 dated September 11, 1980, have been incorporated into the supplementary information contained herein.

List of Subjects in 12 CFR Parts 561 and 572

Savings and loan associations.

The Board finds that observance of the notice and comment period pursuant to 5 U.S.C. 553(b) and 12 CFR 508.12, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, are unnecessary because it is in the public interest for the Board's program of net worth assistance adopted by Resolution No. 82-793, dated December 8, 1982, 47 FR 58219 (1982), to take effect at the earliest feasible time and these amendments to that program promote a more efficient administration of the program and are to the benefit of participants in the program.

Accordingly, the Board hereby amends Parts 561 and 572 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. Revise paragraph (b) of § 561.13, as follows:

§ 561.13 Regulatory net worth.

* * * * *

(b) The term "regulatory net worth" also includes the sum of outstanding net worth certificates issued in accordance with Part 572 of this Subchapter or which the Corporation is committed to purchase by virtue of § 572.1(c).

* * * * *

PART 572—NET WORTH CERTIFICATES

2. Amend § 572.1 by revising the title; revising paragraph (a)(2) thereof; amending paragraph (b) thereof by putting into lower case the first letter of the first sentence and inserting at its beginning the following clause: "Except as otherwise specified in paragraph (c) of this section, "; redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) thereof as new paragraphs (d), (e), (f), (g), (h), (i), (j), and (k), respectively; adding a new paragraph (c) thereto; amending new paragraphs (e) and (f) thereof by putting into lower case the first letter of the first sentences of those paragraphs and inserting at the beginning of those paragraphs the following clause: "Except as otherwise specified in paragraph (c) of this section, "; revising the second sentence of new paragraph (g)(1) thereof; and revising new paragraph (j) thereof; as follows:

§ 572.1 Purchase of net worth certificates.

(a) *General.*

* * * * *

(2) This section explains the Corporation's program for the purchase of NWCs from qualified institutions pursuant to the DIA authority. The other sections of this Part specify the procedures for a qualified institution to request that the Corporation purchase NWCs, govern action by the Corporation on such a request, define pertinent terms, place certain limitations on an institution having outstanding NWCs, and authorize the issuance of NWCs by Federal mutual institutions.

* * * * *

(c) *Commitment to purchase NWCs.*

(1) Except as otherwise provided in paragraphs (c) (2) and (3) of this section (c), if the Corporation determines in accordance with § 572.3(i) of this Part that an institution is eligible to sell to the Corporation NWCs allocable to operating losses for the applicable period during which the institution files an application pursuant to § 572.3, the Corporation is committed to purchase that amount of NWCs determined in accordance with paragraph (d) of this section.

(2) This commitment exists so long as the institution remains a qualified institution and its amount is calculated and adjusted as appropriate on a month-to-month basis during the appropriate applicable period. Actual purchases will be made on the basis of the results of an applicable period. The amounts of a monthly commitment or monthly operating losses not covered by a commitment that result from the minimum purchase or rounding procedures shall be taken into account in subsequent months and appropriate adjustments made.

(3) The amount of NWCs that the Corporation is committed to purchase, as specified in subparagraph (1) of this paragraph (c), shall be reduced by the amount of such NWCs allocable to operating losses determined by the Corporation to have been occasioned by mismanagement, by speculation in futures or forward contracts, by excessive operating costs, or by management actions designed for the purpose of obtaining assistance.

(g) *Holding companies.*

(1) * * * Under these circumstances and except as otherwise provided in paragraph (c) of this section, the holding company or majority stockholder will be required, as a condition to the Corporation's purchase, to infuse sufficient capital in excess of the Corporation's NWC purchase to increase the institution's regulatory net worth to the agreed-upon level.

* * * * *

(j) *Effect on regulatory net worth.* 12 U.S.C. 406(f)(5)(J), as adopted by the DIA, states that "[n]otwithstanding any other Federal or State law, net worth certificates purchased by the Corporation under this paragraph shall be deemed to be net worth for statutory and regulatory purposes." Accordingly, NWCs when purchased by the Corporation under the DIA authority shall constitute an item of the issuing institution's regulatory net worth as defined in § 561.13 of this Subchapter. In addition, NWCs which the Corporation is committed to purchase in accordance with paragraph (c) of this section constitute regulatory net worth as defined in § 561.13. This permits the inclusion of outstanding NWCs and those which the Corporation is committed to purchase in the institution's calculation of its reserves and net worth for purposes of paragraphs (a) and (b) of § 563.13.

* * * * *

3. Amend § 572.3 by revising paragraph (c) thereof; redesignating paragraphs (d), (e), (f), (g), (h), (i), (j), and (k) thereof as new paragraphs (e), (f), (g), (h), (j), (k), (l) and (m), respectively; adding new paragraphs (d) and (i) thereto; and revising the first sentence of new paragraph (f), and new paragraphs (h) and (m), thereof; as follows:

§ 572.3 Application for Corporation purchase of net worth certificates.

* * * * *

(c) An application must request that the Corporation purchase net worth certificates from a qualified institution on the basis of that institution's operating losses for an applicable period, and shall be filed no later than the later of March 1, 1983, or 30 days after the close of that applicable period.

(d) In addition to requesting that the Corporation purchase net worth certificates from the institution based on operating losses for the applicable period immediately preceding the filing of the application, the application shall be deemed to request, unless otherwise specified, that the Corporation purchase net worth certificates from the institution on the basis of its operating losses for the current applicable period.

* * * * *

(f) If an application is acceptable to the Corporation with regard to the applicable period immediately preceding the date of its filing, then the Corporation will issue to the applicant a peliminary notice of an intent to purchase a specified amount of net worth certificates.* * *

(h) If the Corporation finds unacceptable an application pertaining to the applicable period immediately preceding the date of its filing, the Corporation will issue to the applicant a notice of determination not to purchase net worth certificates.

(i) In addition to determining whether to purchase net worth certificates based on the applicable period immediately preceding the filing of an application, the Corporation, unless requested not to do so, will make an initial determination regarding the applicant's eligibility to sell net worth certificates to the Corporation based on operating losses for the current applicable period (*i.e.*, the period during which the application is filed), and will notify the applicant regarding this determination. If an initial determination of eligibility regarding such current period is made by the Corporation, the Corporation will be committed to purchase net worth certificates allocable to such current applicable period as provided in § 572.1(c) of this Part.

* * * * *

(m) Except as otherwise specified in § 572.1(c) of this Part, a qualified institution that applies for Corporation purchase of NWCs does not become entitled to require any such purchase.

4. Add new paragraph (e) to § 572.5 as follows:

§ 572.5 Right to appeal.

* * * * *

(e) There is no right to appeal an initial determination by the Corporation of non-eligibility of an applicant pursuant to § 572.3(i) of this Part.

(Secs. 2 and 5, 48 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); secs. 401, 402, 403, 405, 406, and 407, 48 Stat. 1255, 1256, 1257, 1259, and 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729, and 1730); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp. p. 1071)

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 83-5046 Filed 2-25-83; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-126-AD; Amendment 39-4572]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing Airworthiness Directive (AD) which requires periodic inspections of the Boeing P/N 10-60536-1 fuel feed hose assemblies in the wheel well area. Sufficient data has now been developed on corrosion resistant steel (CRES) braided fuel hoses to eliminate the need for periodic inspections. This amendment provides a terminating action.

DATE: Effective March 9, 1983.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Pasion, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2520. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 77-03-02, Amendment 39-2826 (42 FR 06581, February 3, 1977), requiring periodic inspection of the Boeing P/N 10-60536-1 fuel feed hose assemblies, was issued following discovery of braid corrosion in hoses constructed with carbon steel braid. The AD required inspection and replacement as required in accordance with Boeing Service Bulletin 727-28-51. The service bulletin was later revised to include replacement with approved hoses constructed with corrosion resistant steel (CRES) braid. Testing and evaluation of the CRES braid hoses that have been in service for 5 years and 13,000 hours, demonstrated no corrosion or performance deterioration. Therefore, AD 77-03-02 is amended to incorporate a terminating action consisting of replacement of the carbon steel braid hoses with approved CRES braid hoses.

Since this amendment provides an alternate means of compliance, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending AD 77-03-02, Amendment 39-2826 (42 FR 06581, February 3, 1977), as amended by Amendment 39-2852 (42 FR 15308, March 21, 1977), by adding a new paragraph D. to read as follows:

D. If all hose assemblies are replaced per paragraph A., above, with corrosion resistant steel (CRES) braided hoses, the repetitive inspections required by paragraph C., above, may be discontinued as the installation of CRES braided hoses is considered terminating action for this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 9, 1983.

(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 Federal Aviation Administration has determined that this document involves an amendment that is relieving in nature and does not impose any additional burden on any person. This amendment is not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation, and I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since few, if any, small entities are affected by the rulemaking.

Issued in Seattle, Washington on February 16, 1983.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 83-4886 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 82-CEF-7-AD; Amendment 39-4573]

Airworthiness Directives; British Aerospace Aircraft Group Model HP 137 Jetstream Mk 1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace Aircraft Group Model HP 137 Mk 1 and series 200 airplanes which requires inspection of the wing lower skin panels at the main gear bay cutout. There have been reports of loose rivets and possible fatigue cracks in the lower wing skin of these airplanes. The inspection procedures will assure that loose rivets and fatigue cracks in the lower wing skins are detected and repaired before they cause fuel leaks and result in catastrophic wing failure.

EFFECTIVE DATE: April 6, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: British Aerospace Aircraft Group Jetstream Service Bulletin No. 7/3, dated October 1980, and British Aerospace Aircraft Group Jetstream Modification Numbers 5146, Issue 1, and 5149, Issue 1, both dated March 1981, applicable to this AD may be obtained from British Aerospace, Incorporated, 13850 McLearen Road, Dulles Industrial Aerospace Park, Herndon, Virginia 22070. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Christie, Manager, Aircraft Certification Staff, Federal Aviation Administration, Europe, Africa and Middle East Office, c/o American Embassy, Brussels, Belgium, telephone: 513.38.30, or Mr. Paul Cormaci, Aircraft Certification Division, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-6933.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an

airworthiness directive requiring inspection of the wing lower skin panels at the main gear bay cutout on certain British Aerospace Aircraft Group Model HP 137 Mk 1 and series 200 airplanes was published in the **Federal Register** on December 6, 1982, 47 FR 54830 and 54831. The proposal was prompted by reports of loose or damaged rivets and cracks in the wing bottom skin panel at the main gear bay cutout on a Jetstream fatigue test specimen airplane. Development of these defects could result in fuel leaks and catastrophic failure of the wing.

Interested persons have been afforded an opportunity to comment on the proposal. Two commenters responded. One commenter reported that six of the seven aircraft under its control had accumulated between 10,000 and 15,000 airframe hours without developing any cracks. The manufacturer's modifications 5146 or 5149 are not incorporated into any of these aircraft. The commenter also stated that the average monthly utilization of these aircraft is approximately 200 flight hours per aircraft. Based upon its experience, this commenter does not believe that an AD is justified unless other U.S. operator experience demonstrates the reported crack development. This commenter offered the following recommendations in the event that other operators have experienced difficulties with cracks:

(1) Inspection frequency at 500 flight hour intervals.

(2) Cracks to be repaired and loose/damaged rivets replaced in accordance with BA Service Bulletin 7/3 (already in the proposal).

(3) Embodiment of Modification 5146 and 5149 would be optional; however, when accomplished, the inspection requirements of the AD would no longer be applicable.

The other comments were from the manufacturer who recognized that the duration of the intervals between the repetitive inspections addressed in paragraph (b) of the proposed AD had not been specified. Its recommendation was to retain the interval specified in Service Bulletin No. 7/3, dated October 1980. This commenter also concurred with the repetitive inspection discontinuance providing modifications 5146 and 5149 have been accomplished. The FAA accepts the manufacturer's recommended inspection interval on the basis of its broader experience and knowledge relating to this problem. The FAA also accepts the position of both commenters on the modification issue. Accordingly, the final rule will reflect these changes.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

British Aerospace, Aircraft Group: Applies to Model HP 137 Jetstream Mk 1 and Jetstream series 200 airplanes, not incorporating British Aerospace Modification Nos. 5146 and 5149, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To detect loose or damaged rivets and to prevent fuel leaks and propagation of fatigue cracks in the lower wing skin panels, accomplish the following:

(a) Within 100 hours time-in-service on airplanes having 6,500 or more hours time-in-service on the effective date of this AD or prior to 6,600 hours time-in-service on airplanes having less than 6,500 hours time-in-service on the effective date of this AD, and within each additional 100 hours time-in-service thereafter, accomplish the following:

(1) Visually inspect lower wing skins between wing stations 60 and 115 for loose or damage rivets and cracks, in accordance with instructions contained in paragraphs 3(a) through 3(e) of British Aerospace Jetstream Service Bulletin No. 7/3, dated October 1980, hereinafter referred to as the Service Bulletin, and correct any unsatisfactory conditions as follows:

(i) Replace loose or damaged rivets in accordance with paragraph 3(g) of the Service Bulletin, or an FAA-approved equivalent, within the next 25 hours time-in-service after detection;

(ii) Repair cracks in accordance with paragraphs 3(h) through 3(l) of the Service Bulletin and instructions provided by the Divisional Aircraft Service Manager, British Aerospace, Aircraft Group, Scottish Division, Prestwick Airport, Ayshire, Scotland. Repair instructions provided by British Aerospace Aircraft Group must be FAA approved as an equivalent means of compliance in accordance with paragraph (e) below:

(iii) When lower wing skin cracks are detected, further flight is limited by the crack length limits prescribed by paragraphs 3(h) through 3(l) of the Service Bulletin, with inspection for crack growth after each flight.

(b) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified inspection intervals to allow them to be accomplished concurrent with other scheduled maintenance on these airplanes.

(c) The inspections required by paragraph (a) of this AD are no longer required when British Aerospace Modification Nos. 5146 and 5149 are installed.

(d) The airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of complying with this AD must be approved by Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

This amendment becomes effective on April 6, 1983.

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

Note.—The FAA has determined that this regulation only involves approximately 21 airplanes at an approximate annual inspection cost of $360 a year or a one-time modification cost of $7,308 for each aircraft. Therefore, I certify that this action (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); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Kansas City, Missouri, on February 16, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-4865 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-CE-7-AD; Amendment 39-4574]

Airworthiness Directives; British Aerospace, Aircraft Group, Scottish Division Model Beagle B.121 Series 1 and 2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace, Aircraft Group, Scottish Division Model Beagle B.121 Series 1 and 2 airplanes which requires inspections of the engine mount structure. Cracks have been found in the engine mounting structure in the weld cluster on the region of the top engine pickup bolts. These inspections will detect these cracks and preclude failure of the engine mount structure.

EFFECTIVE DATE: March 7, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: British Aerospace, Aircraft Group, Scottish Division Service Bulletin B121/81, Issue 2, dated December 3, 1980, applicable to this AD may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041. A copy of this information is also contained in the Rules Docket, FAA Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. O. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, or P. Cormaci, Manager, Foreign FAR 23 Section ACE-109, Central Region, FAA, 601 East 12th Street, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION: British Aerospace, Aircraft Group, Scottish Division has received reports of cracks developing in the engine mounting structure on its Model B.121, Series 1 and 2 airplanes. Occurrences of this type could have an adverse effect on the airplane structural integrity if not discovered and corrected before the critical crack length develops. Undetected cracks in the engine mount structure may result in the failure of the mount structure and subsequent loss of the airplane. As a result, British Aerospace, Aircraft Group, Scottish Division has issued Service Bulletin B121/81, Issue 2, dated December 3, 1980, which recommends inspection of all engine mounting structures which have accumulated more than 1,000 hours time-in-service and repetitive inspections thereafter at intervals not to exceed 50 hours time-in-service. The United Kingdom Civil Aviation Authority who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under the United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the United Kingdom Civil Aviation Authority combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of British Aerospace, Aircraft Group, Scottish Division Service Bulletin B121/81, Issue 2, dated December 3, 1980, and the mandatory classification of this Service Bulletin by the United Kingdom Civil Aviation Authority. Based on the foregoing, the FAA has determined that the unsafe condition described herein is likely to exist or develop in other products of the same type design certificated for operations in the United States. Accordingly an AD is being issued requiring initial and repetitive inspections of the engine mount structure on British Aerospace, Aircraft Group, Scottish Division Model Beagle B.121 Series 1 and 2 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, 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

PART 39—[AMENDED]

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

British Aerospace, Aircraft Group, Scottish Division. Applies to Model B. 121 series airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated unless already accomplished. To preclude failure of the engine mounting structure, within the next 100 hours time-in-service after the effective date of this AD or upon accumulating 1,000 hours time-in-service, whichever occurs later, and thereafter at intervals not to exceed 50 hours time-in-service from the last inspection, accomplish the following:

(a) Visually inspect the engine mounting structure for cracks in accordance with the "Action" Section of British Aerospace, Aircraft Group, Scottish Division, Section of British Aerospace, Aircraft Group, Scottish Division, Service Bulletin Number B121/81, Issue 2, dated December 3, 1980, or an FAA approved equivalent.

(b) If a crack is found in the engine mounting structure, prior to further flight, repair or replace the engine mount in accordance with instructions provided by British Aerospace, Dulles International Airport, Washington, D.C., phone 703-435-9100, and approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

(c) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) Operators who have not kept records of hours time-in-service of the engine mounting structure must substitute airplane hours time in-service in lieu thereof.

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

(f) An equivalent method of compliance with this AD if used must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on March 7, 1983.

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

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

Issued in Kansas City, Missouri, on February 16, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-4891 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 15143; Amdt. 39-4571]

Airworthiness Directives; Britten-Norman Models BN-2A and BN-2A MK III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 75-24-07, Amendment 39-2428, applicable to Britten-Norman Models BN-2A Islander

and BN-2A MK III Trislander airplanes by adding requirements for repetitive visual inspections of all rudder bar units for fatigue cracks and loose fasteners. If not detected and corrected, failure of the rudder bar unit and resulting loss of rudder control may occur. The required inspections and replacement, if necessary, will preclude potential rudder bar failures from occurring because of these causes.

EFFECTIVE DATE: March 3, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: The applicable Service Bulletins and modification sheets may be obtained from Britten-Norman (Bembridge), Ltd., Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: A. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, telephone 513.38.30; or Paul Cormaci, Manager, Foreign FAR 23 Section, FAA, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: The FAA published Airworthiness Directive (AD) 75-24-07, Amendment 39-2428 (40 FR 53003), on November 14, 1975. It requires an initial inspection at 25 landings and periodic inspections at 500 landing intervals to detect fatigue cracks in the rudder bar units (except those rudder bar units modified in accordance with Britten-Norman Mod. No. NB/M/463) that are used on Britten-Norman Models BN-2A Islander and BN-2A MK III Trislander series airplanes. The AD also requires replacement of cracked parts before further flight. The visual inspections for fatigue cracks in the rudder bar units are conducted in accordance with Britten-Norman Service Bulletin BN-2/SB.56 dated October 10, 1973. Britten-Norman published Issue 2 of Service Bulletin No. BN-2/SB.56, dated February 13, 1978, which specified inspection of all rudder bar units whether modified or not for fatigue cracks and loose fasteners upon completion of the first 2,500 landings and thereafter at intervals not to exceed 500 landings, unless (or until) the repair scheme specified by Service Bulletin No. BN-2/SB.56 is incorporated, whereafter the datum of 2,500 landings becomes reestablished before the repetitive inspections begin again. The United Kingdom Civil Aviation Authority (CAA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain has classified Britten-Norman Service Bulletin No. BN-2/SB.56, Issue 2, dated February 13, 1978, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under British registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Britten-Norman Service Bulletin No. BN-2A/SB.56, Issue 2, and the mandatory classification of this Service Bulletin by the CAA.

Based on the foregoing, the FAA has determined that the condition addressed by Britten-Norman Service Bulletin No. BN-2A/SB.56, Issue 2, is an unsafe condition that may exist on products of this type design certificated for operation in the United States. Accordingly, AD 75-24-07 is being revised requiring repetitive inspections to detect and correct fatigue cracks and loose fasteners around the collar of the nose wheel steering lever to prevent the potential loss of nose gear steering or rudder control on Britten-Norman Models BN-2A Islander and BN-2A Mark III Trislander airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest 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

PART 39—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 75-24-07, Amendment 39-2428 (40 FR 53003), § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended as follows:

(1) Revise the applicability statement of the AD to read as follows:

Britten-Norman, Ltd: Applies to Models BN-2A (Islander) and BN-2A Mark III (Trislander) airplanes, all series, certificated in any category.

(2) Revise the statement of purpose in the AD to read as follows:

To prevent the possible loss of rudder control or nose gear steering, accomplish the following:

(3) Revise paragraph (a) of the AD to read as follows:

(a) Inspect the rudder bar unit for cracks and loose fasteners in accordance with "Action" section of Britten-Norman Service Bulletin No. BN-2A/SB.56, Issue 2, dated February 13, 1978, or an FAA approved equivalent.

(4) Revise paragraph (d) of the AD to read as follows:

(d) If, during an inspection required by paragraph (a) of this AD, loose fasteners are found, prior to further flight, modify the rudder bar unit by installing close tolerance bolts in place of existing rivets or jo-bolts, in accordance with Britten-Norman Mod. No. NB/M/428, Issue 2, dated July 2, 1970, or an FAA approved equivalent.

(5) Add a new paragraph (e) to read as follows:

(e) For the purposes of complying with this AD, subject to the acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours time-in-service by the operator's fleet average time from take-off to landing for the airplane type.

This amendment becomes effective March 3, 1983.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(a)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 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 regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on February 15, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-4587 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-CE-5-AD; Amendment 39-4576]

Airworthiness Directives; DeHavilland Models DHC-2 MK I, MK II and MK III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to DeHavilland Models DHC-2 MK I, MK II and MK III airplanes, which supersedes AD 71-22-01. The new AD requires inspection of wing lift strut upper fittings and specifies accelerated replacement times for certain part numbered wing lift struts. Additional information has become available regarding the possibility of fatigue failure for these components. This action will detect or eliminate fatigue cracks in the wing lift strut fittings prior to failure.

EFFECTIVE DATE: March 7, 1983.

COMPLIANCE: As prescribed in the body of AD.

ADDRESSES: DeHavilland Service Bulletin (S/B) No. 2/3, reissued May 14, 1982, S/B No. 2/34, dated May 14, 1982, and S/B No. TB/9, Issue 2, dated January 11, 1968, applicable to this AD may be obtained from DeHavilland Aircraft of Canada, Limited, Downsview, Ontario, Canada M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, New York Aircraft Certification Office, ANE-172, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, Telephone No. (516) 791-6220; or Mr. Paul Cormaci, Manager, Foreign FAR 23 Section, FAA, Aircraft Certification Division, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No. (816) 374-6932.

SUPPLEMENTARY INFORMATION: The manufacturer initiated fatigue tests in 1964 and has established and published retirement times and inspection instructions, updated as the need became apparent on wing strut assemblies used on early design airplanes of the DeHavilland DHC-2 series. The FAA made compliance with these mandatory by issuing AD 71-22-01, Amendment 39-1319 (36 FR 20417). The manufacturer continued the fatigue tests with later designed components and has completed fatigue testing of three different design wing strut assemblies utilizing a complete wing with representative portions of the fuselage. Data obtained provides a basis for more accurate prediction of the safe service lives of the wing lift strut assemblies which may be installed on the DeHavilland DHC-2 series airplanes. Also, the investigation of a 1981 accident involving a DeHavilland Model DHC-2 MK I airplane disclosed evidence of fatigue damage and failure of a wing upper lift strut fitting. Following this, the manufacturer issued DeHavilland Service Bulletin No. 3/34 and a revision to DeHavilland Service Bulletin 2/3 both dated may 14, 1982, recommending an accelerated retirement schedule for early design wing strut assemblies and establishing a comprehensive retirement schedule covering all design DHC-2 series airplane wing strut assemblies under various usages. These Service Bulletins with Service Bulletin TB/9, Issue 2, dated January 11, 1968, contain the manufacturer's recommendations pertaining to wing strut assembly inspections and retirement based on latest available data on all DeHavilland DHC-2 series wing strut assemblies. Transport Canada who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada has classfified these Service Bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of DeHavilland Service Bulletins 2/3 (May 14, 1982), 2/34 (May 14, 1982), and TB/9, Issue 2 (January 11, 1968), and the mandatory classification of these Service Bulletins by Transport Canada.

Based on the foregoing, the FAA has determined that the condition addressed by DeHavilland and Transport Canada is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Also, the FAA finds that the condition described herein is an emergency that requires the immediate adoption of this regulation. Accordingly, notice and public procedure hereon are impractical and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

Therefore, an AD is being issued superseding AD 71-22-01 which requires inspections of wing lift strut upper fittings and accelerated replacement times for certain part numbered wing lift struts on DeHavilland Models DHC-2 MK I, MK II and MK III airplanes.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

DeHavilland: Applies to Models DHC-2 MK I, MK II and MK III airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the wing lift strut, accomplish the following:

(a) For ex-military airplanes with wing lift strut assemblies C2W545A/C2W546A and for airplanes fitted with ex-military strut assemblies C2W545A/C2W546A, comply with paragraph (1) and (2) below within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished within the last 400 hours time-in-service, and thereafter at intervals not to exceed 500 hours time-in-service from the last inspection.

(1) Detach each wing lift strut assembly from the attachment fitting on the wing. Using a dye-penetrant method with at least a 10-power glass or an FAA approved equivalent method, inspect the lift strut upper fitting for cracks with particular attention given to the ¼-inch radius junction of the lug to the attachment flanges. Ensure that each radius is smooth and blends smoothly into the lug without machine marks or nicks.

(2) If a crack, mark, or nick is found in the radius, replace the lift strut assembly before further flight with unused strut assemblies C2W1103A or C2W1104A, or with C2W1115-1 or C2W1115-2.

(i) Strut assemblies C2W1115-1 and C2W1115-2 are not subject to retirement.

(ii) Whenever new wing strut assemblies are installed, use new attachment bolts AN180-26 or AN180C-26, bolt-strut, lower

attachment, and C2W497, bolt-strut, upper attachment.

(b) For all airplanes with wing lift strut assemblies C2W545A/C2W546A, on or before April 1, 1983, unless already accomplished, comply with the requirements of the "Compliance" Section in DeHavilland Service Bulletin No. 2/34, dated May 14, 1982.

(c) For airplanes with wing lift strut assemblies C2W469A/470A, C2W473A/474A, C2W685A/686A, and C2W573/574, on or before January 1, 1984, comply with the requirements of the "Compliance" Section in DeHavilland Service Bulletin No. 2/34, dated May 14, 1982.

(d) For DHC-2 MK I and MK II aircraft, comply as follows with the wing strut assembly retirement times in DeHavilland Service Bulletin No. 2/3, dated December 20, 1967, reissued May 14, 1982.

(1) For aircraft engaged in normal operations at maximum gross weight of 5100 lb., comply with paragraphs 2.1 and 2.2 of the Bulletin.

(2) For aircraft engaged in "special-purpose operations" at maximum gross weight of 5100 lb., comply with paragraphs 3.1 and 3.2 of the Bulletin.

(3) For aircraft engaged in operations at gross weight in excess of 5100 lb., comply with paragraphs 4.1, 4.2 and 4.3 of the Bulletin.

(e) Replace modified or repaired struts identified in paragraphs 5.1 and 5.2 of Service Bulletin No. 2/3, reissued May 14, 1982, in accordance with the times prescribed therein.

(f) For DHC-2 MK III aircraft, comply as follows with the wing strut assembly retirement times in DeHavilland Service Bulletin No. TB/9, Issue 2, dated January 11, 1968.

(1) For aircraft engaged in normal operations at maximum gross weight of 5100 lb., or 5370 lb. with tip tanks full, comply with paragraphs 2.1 and 2.2 of the Service Bulletin.

(2) For aircraft engaged in "special-purpose low level operations" at maximum gross weight of 5100 lb., or 5370 lb. with tip tanks full, comply with paragraphs 3.1 and 3.2 of the Service Bulletin.

(g) A special flight permit may be issued in accordance with FAR 21.197 to operate the airplane to a location where the requirements of this AD may be accomplished.

(h) An equivalent method of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This AD supersedes AD 71-22-01, Amendment 39-1319 (FR 36-20417).

This amendment becomes effective on March 7, 1983.

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

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

Issued in Kansas City, Missouri, on February 18, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-4893 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-ASW-08; Amdt. 39-4566]

Airworthiness Directives; Enstrom Models F-28A and 280 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes a currently effective airworthiness directive (AD) which requires the replacement prior to 1000 hours' time in service of certain ring gear carriers in the main rotor gear boxes on Enstrom Model F-28A and 280 helicopters and adopts a new AD. This superseding AD is required because of an additional failure which occurred prior to the ring gear carrier replacement required by the original AD. This AD requires an inspection and replacement, as necessary, of the main rotor gearbox ring gear carriers.

DATE: Effective March 1, 1983.

ADDRESSES: The applicable service bulletin may be obtained from Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858. A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591 and at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph H. McGarvey, ACE-120C, Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone number (312) 694-7136.

SUPPLEMENTARY INFORMATION: Amendment 39-1794 (39 FR 7779) as amended by Amendments 39-1850 (39 FR 17430) and 39-1922 (39 FR 29917) requires replacement of certain main rotor gearbox ring gear carriers on Enstrom F-28A and 280 helicopters prior to the accumulation of 1000 hours' time in service since new or since the last factory overhaul. After issuing Amendment 39-1794, as amended by Amendments 39-1850 and 39-1922, a failure of a ring gear which had 450 hours' time in service occurred on a Model F-28A. The early failure was found to have resulted from high stresses caused by thin walls of the ring gear carrier. As a result of this failure, the manufacturer developed an inspection and procedure for identifying and replacing ring gear carriers having "thin walls" in order to preclude failure and resulting loss of lift of the main rotor.

Therefore, the AD is being superseded by a new AD that establishes an inspection at 25 hours' time in service from the effective date of the AD for helicopters with certain serial numbered main rotor gear boxes and requires replacement of ring gear carriers found to have "thin walls."

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

Approximately 164 aircraft could be affected by the requirements of this AD for an estimated impact of $120,540 or $735.00 per aircraft.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aircraft safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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 removing Amendment 39-1794, as amended by Amendments 39-1850 and 39-1922 (AD 74-05-03), and by adding the following new Airworthiness Directive:

Enstrom Helicopter Corporation: Applies to Enstrom Models F-28A and 280 helicopters certificated in all categories equipped with main rotor gearboxes (P/N 28-13101) having the following serial numbers: 2A, 3A, 6, 8, 9, 10, 12, 13, 14, 15, 20, 21, 25, 26, 28, 29, 30, 31, 32, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 51, 53, 56, 70, 72, 73, 74, 75, 76, 77, 78, 86, 95, 100, 07, 012, 016, 017, 019, 020, 027, 032.

037, 050, 057, 060, 063, 067, 081, 082, 084, 085, 087, 088, 089, 093, 094, 097, 098, 099, 01-001-71, 01-073-69, 02-001-71, 02-02-71, 02-13-70, 03-001-72, 03-002,-72, 04-001-72, 05-001-72, 05-003-72, 06-001-72, 07-001-72, 07-002-72, 07-004-72, 07-005-72, 07-006-72, 08-001-72, 08-002-72, 09-001-72, 09-001-73, 09-002-72, 09-01-69, 09-02-69, 09-04-69, 09-06-69, 09-07-69, 10-001-72, 10-002-72, 11-001-72, 11-002-72, 12-001-72, 13-002-72, 13-003-72, 13-004-73, 14-001-72, 14-002-72, 14-005-72, 14-006-72, 15-001-72, 15-002-72, 16-001-72, 16-002-72, 17-001-72, 20-001-72, 21-001-72, 21-002-72, 21-003-72, 22-001-73, 23-001-73, 23-003-73, 25-002-73, 26-001-73, 27-001-73, 27-002-73, 27-003-73, 27-004-73, 28-001-73, 28-003-73, 30-001-73, 31-001-73, 31-002-73, 32-001-73, 32-002-73, 32-004-73, 32-006-73, 32-007-73, 33-001-73, 33-002-73, 33-003-73, 33-006-73, 33-007-73, 34-001-73, 34-002-73, 35-001-73, 35-002-73, 35-003-73, 35-004-73, 36-001-73, 36-002-73, 36-003-73, 37-001-73, 37-003-73, 37-005-73, 38-001-73, 39-001-73, 39-002-73, 40-001-73, 43-001-73, 43-002-73.

To prevent the possible loss of power to the main rotor, accomplish the following:

Within the next 25 hours' time in service from the effective date of this AD:

a. Drain the oil from the transmission, and remove the oil filler cap assembly.

b. Rotate the main rotor shaft until the core hole in the upper surface of ring gear carrier (P/N 28-13106) is aligned with the oil filler port. This may be ascertained by looking through the oil filler port.

c. If no hole can be observed in the bottom web of the ring gear carrier, the wall thickness of the carrier is satisfactory and the inspections of steps d, e, and f do not apply.

d. If a hole can be observed in the bottom web of the ring gear carrier, the thickness of the lower web must be determined to establish airworthiness.

e. Inspection tool, T-0125, is provided with Enstrom Service Directive Bulletin 0017, Revision C. Insert this inspection tool through the oil filler port and core hole and determine the thickness of the ring gear carrier lower web as shown in Figure 1 of Enstrom Service Directive Bulletin 0017, Rev. C, or FAA approved equivalent.

Note.—T-0125 is a go/no-go gauge. If it will fit or go over the lower web, the web is too thin and unairworthy. If it will not fit or go over the lower web, the web is sufficiently thick, and is airworthy.

f. Repeat steps b., d., and e. for each of the three holes in the ring gear carrier's lower web. If inspection tool T-0125 will slip over the web in any one of the three (3) lower web hole locations, the ring gear carrier is unairworthy.

g. Replace unairworthy ring gear carriers with new or serviceable ring gear carrier P/N 28-13106, Revision F, or later revision.

h. Service the transmission with oil in accordance with the Maintenance Manual and reinstall the oil filler cap assembly.

i. Any equivalent method of compliance with this AD must be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 Devon Avenue, Des Plaines, Illinois 60018.

j. In accordance with FAR 21.197, flight is permitted to a base where the inspection required by this AD may be accomplished.

This supersedes Amendment 39-1794, as amended by Amendments 39-1850 and 39-1922 (AD 74-05-03).

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

Note.—The FAA has determined, as shown earlier, that this document involves a regulation that is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on February 8, 1983.

C. R. Melugin, Jr.

Director, Southwest Region.

[FR Doc. 83-4886 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-CE-4-AD; Amendment 39-4575]

Airworthiness Directives; Pilatus Britten-Norman Models BN-2A Islander and BN-2A MKIII Trislander Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman Models BN-2A Islander and BN-2A MKIII Trislander airplanes which requires visual inspection and, if necessary, modification of attachment brackets for the two main engine control cables and the propeller control cable. Flexing of these brackets during control operation introduces fatigue which could eventually lead to failure of the bracket. The inspection and modification will eliminate fatigue failure of the brackets and prevent possible loss of propeller and engine controls during flight.

EFFECTIVE DATE: March 7, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Service Bulletin No. BN-2/SB109 Issue 3 dated March 5, 1979, Modification No. NB/M/939 and Modification No. NB/M/996 applicable to this AD may be obtained from Pilatus Britten-Norman (Bembridge) Ltd., Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Al O. Astorga, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium; Telephone 513.38.30, or Mr. Paul Cormaci, Manager, Foreign FAR 23 Section, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: Teleflex conduit swivel attachment brackets on the Pilatus Britten-Norman Models BN-2A and BN-2A MKIII airplanes are susceptible to fatigue failure. The FAA has received one report of failure in flight and the manufacturer indicates that other failures have occurred. Such failure results in loss of control over engine power. The manufacturer has introduced two modifications to correct this condition: Modification NB/M/939 provides for reinforcement in the propeller governor control and Modification NB/M/996 provides throttle and mixture control reinforcement. Subsequent to publication of these modifications, the manufacturer published Service Bulletin BN-2/SB.109 Issue 3 dated March 5, 1979, which provides for inspection and reinforcement of brackets in airplanes which have not been modified in accordance with NB/M/939 and NB/M/996. The United Kingdom of Great Britain and Northern Ireland Civil Aviation Authority (UKCAA) who have responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain has classified this bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom of Great Britain and Northern Ireland registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness

requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin BN-2/SB.109 Issue 3 and the mandatory classification of this bulletin by UKCAA.

Based on the foregoing, the FAA has determined that the unsafe condition described herein is likely to exist or develop in other products of the same type design certificated for operation in the United States. Accordingly, an AD is being issued requiring visual inspection and, if necessary, modification of the powerplant control brackets on Pilatus Britten-Norman Model BN-2A and Model BN-2A MKIII airplanes. Because an emergency condition affecting aviation safety exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, 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

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation regulations (14 CFR 39.13) is amended by adding the following new AD.

Pilatus Britten-Norman: Applies to Model BN-2A Islander and Model BN-2A MKIII Trislander airplanes certificated in any category which have not been modified in accordance with Modification No. NB/M/939 and Modification No. NB/M/996.

Compliance: Required within 100 hours time-in-service, unless already accomplished.

To prevent failure of throttle, mixture or propeller control, accomplish the following:

a. Using a 5-power glass, visually inspect the attachment brackets on the teleflex conduit swivel assemblies of the propeller control and two main engine controls for cracking in accordance with Item I of the "Inspection" Section of Britten-Norman Service Bulletin No. BN-2/SB.109, Issue 3, dated March 5, 1979.

1. Replace any teleflex swivel assembly having a cracked bracket with a serviceable assembly (Part No. C.79412, Part No. C.79411 or Part No. C.79410) and incorporate a teleflex swivel attachment bracket reinforcement as instructed in the "Application of the Reinforcing Scheme" Section of the Service Bulletin.

2. If the bracket is not cracked, incorporate a teleflex swivel attachment bracket reinforcement as shown in the "Application of the Reinforcing Scheme" Section of the Service Bulletin.

b. Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

c. An equivalent method of compliance with this AD may be used if approved by Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on March 7, 1983.

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

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

Issued in Kansas City, Missouri, on February 18, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-4892 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 82-ASW-80]

Revocation of Transition Area: Seymour, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revoke a transition area at Seymour, TX. The intended effect of the amendment is to cancel controlled airspace that is no longer required for the protection of aircraft. This amendment is necessary since the transition area is no longer required and the instrument flight procedures based on this airspace have been canceled.

EFFECTIVE DATE: April 14, 1983.

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 December 20, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 56654) stating that the Federal Aviation Administration proposed to revoke the Seymour, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. No comments were received. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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 70-3A dated January 3, 1983, is amended, effective 0901 G.m.t., April 14, 1983, as follows:

Seymour, TX Revoked

(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 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 Fort Worth, TX, on February 15, 1983.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 83-4894 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3017]

AHC Pharmacal, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on April 28, 1980 (45 FR 31979), by relieving respondent of the obligation of disseminating corrective advertisements which state that "no product can cure acne" prior to disseminating advertisements for "AHC Gel" or any acne product or regimen. In addition to the two well-controlled, double-blind clinical studies previously required for all superiority claims, the modified order now permits respondents to rely on FDA Panel recommendations as a reasonable basis for substantiating superiority claims.

DATES: Consent Order issued April 28, 1980. Modifying Order issued February 8, 1983.

FOR FURTHER INFORMATION CONTACT: FTC/P, Howard Beales, Washington, D.C. 20580, (202) 523-3868.

SUPPLEMENTARY INFORMATION: In the Matter of AHC Pharmacal, Inc., a corporation, and James E. Fulton, M.D., individually and as corporate president. Codification appearing at 45 FR 31979 is amended by deleting the following: Subpart—Corrective Actions and/or Requirements: 13.533-20 Corrective advertising.

List of Subjects in 16 CFR Part 16

Acne treatment products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Order Reopening the Proceeding and Modifying Cease and Desist Order

AHC Pharmacal, Inc., and James E. Fulton, M.D., (hereinafter "Petitioners") have filed, pursuant to Rule 2.51 of the Commission's Rules of Practice, a Request for Modification of Order, including a request to vacate (hereinafter "Petition").

Petitioners seek the modification or elimination of two provisions of the Commission's Order of April 28, 1980. Petitioners also ask that the action be dismissed and the Order vacated.

The Order concerns Petitioners' representations as advertisers of an acne product and a regimen, and requires them to disseminate corrective advertisements that "no product can cure acne" before engaging in any advertising.

The initial request of July 7, 1982, seeks the modification of the Order in two respects: (1) Petitioners seek to change the format and the media of the corrective advertising required under the Order, and (2) presumably as an alternative, they allege that the basis of the Commission's Complaint is now moot in view of a recent report by a panel of FDA experts and argue that the Commission action should be dismissed and the Order vacated.

Additional issues raised by Petitioners' letter of August 27, 1981 include (3) a charge that their constitutional rights of due process and equal protection are being violated by the Order requirement of double-blind clinical studies to support efficacy claims, and (4) an allegation that a new acne product on the market may, in fact, cure acne, which renders the requirement of the corrective message "no product can cure acne" factually and legally erroneous.

The first issue raised by Petitioners concerns the breadth and frequency of the corrective advertising and the advertising media to be used. Petitioners seek to change the requirement of the Order to disseminate corrective advertising in Sunday newspaper supplements and on radio and to substitute therefor a brochure soliciting mail orders to be sent to at least 20,000 consumers who are potential purchasers of the product.

In support of this portion of the request Petitioners have shown that changed financial conditions of the corporate respondent now prevent it from being able to pay for the cost of such advertising. They further submit that the direct mailing of a less expensive brochure bearing the corrective message to the very consumers who may have been previously exposed to the now prohibited advertising would be more in keeping with the spirit of the Order.

However, Petitioners also argue that the passage of time supports their contention that the corrective advertising requirement be eliminated. There is no evidence before us as to what, if anything, the public recalls of the original advertising, and whether the public perception of the product is still tainted by the claims of "cure" and "superiority." Respondents argue that during the four years when they chose not to advertise at all whatever "lingering effect" the previous claims may have had was dissipated and, therefore, lessened the need for corrective advertising.

Additionally, an argument is made by the Petitioners that a new drug, Accutane, recently approved by FDA for acne treatment, "may, in fact, cure acne." Therefore, the argument continues, the Commission should no longer require the respondents to disseminate a statement ("no product can cure acne") that may be "factually and legally erroneous."

The Commission is persuaded by the evidence of changed financial circumstances and the argument about the passage of time that modification of the Order is warranted. Moreover, without reaching the question as to whether any product may, in fact, cure acne, the Commission is of the opinion that under the facts of this case it will not be against the public interest to relieve Petitioners from the requirement of the corrective message. 15 U.S.C. 45. (B) and 16 CFR 2.51.

The second issue raised by Petitioners is the publication by the Food and Drug Administration ("FDA") of advance notice of proposed rulemaking for Topical Acne Drug Products for Over-the-Counter Human Use, 47 FR 12,430 (March 23, 1982) (to be codified at 21 CFR Part 333), and the recommendation of an Advisory Review Panel contained therein. Petitioners assert that since certain labeling representations regarding products containing benzoyl are not acceptable to the Panel, and since benzoyl is the active ingredient of Petitioners' products, the basis for the Commission's original Complaint is now moot and that consideration should be given to dismissal of the action and the vacating of the Order.

The Panel report referred to by the Petitioners is a part of a proposed rulemaking by the Food and Drug Administration that would establish conditions under which over-the-counter (OTC) acne drug products are generally recognized as safe and effective and not misbranded. FDA published an advance notice of the proposed rulemaking on March 23, 1982. The notice is based on the recommendations of the Advisory Review Panel on OTC Antimicrobial (II) Drug Products.

The Panel has reviewed the literature and data submissions and has listened to testimony of interested persons. Numerous manufacturers of acne preparations submitted their products. AHC Pharmacal submitted "bp Gel Medication" and "bp Gel Medication Strong."

The Panel recommends three category conditions. Category I Conditions are those under which OTC acne drug

products are generally recognized as safe and effective and are not misbranded. Category II Conditions are those under which OTC acne drug products are *not* generally recognized as safe and effective or are misbranded. Category III encompasses products for which insufficient data precludes final classification at this time.

The Panel concluded that benzoyl peroxide in concentrations of 2.5 to 10 percent is one of the two active ingredients that are generally recognized as safe and effective (Category I) in treatment and prevention of acne.

The Panel recommends numerous acceptable phrases to be used in labeling for products effective in the treatment of acne, in the prevention of new acne lesions, and in antibacterial claims.

The Commission finds insufficient basis in the Panel's report to support Petitioners' contention that the basis for the Commission's original action is now moot and that the Order should be vacated.

The gravamen of the Commission's Complaint is the allegation concerning the unqualified claim for the effectiveness of Petitioners' product and regimen. The Complaint alleges that the advertisements claim, directly or by implication, that the respondents' product or regimen will cure acne and is superior to other products on the market.

The Panel's recommendations of acceptable language are carefully drawn. Absolute claims are not recommended. The Panel's recommendations do not support the Petitioners' contention that "the basis of the Commission's original complaint is now moot. * * * " The Panel's recommendations do not directly contradict Parts I.A. and B.1. of the Order that clearly prohibit "cure" claims by Petitioners. Given the claims alleged in the Complaint, the Commission believes the Panel's recommendations provide no basis to support Petitioners' argument that the Order should be vacated.

The Commission is willing to vacate an order upon a showing that changes in fact or law or the public interest make the continuation of an order necessary. Petitioners have failed to show such changes in the instant case. For example, they have not demonstrated that the Commission would interpret their advertisements any differently today than when the order was issued, nor have they provided copy tests or other extrinsic evidence demonstrating that the advertisements do not make the claims the Commission prohibited. Moreover, the Commission finds no basis in the public interest for vacating this order.

Petitioners finally argue that the requirement of the double-blind clinical studies for claims that the product results in a skin free of pimples, blackheads, etc., is a violation of "due process and equal protection" since the Panel concluded that products containing benzoyl peroxide "can be represented * * * without any testing whatsoever."

None of the recommended representations in the Panel's list permits a sweeping, unqualified claim of "skin free of pimples, blackheads, etc." The Panel recommends as acceptable such qualified labeling claims as "Clears up most acne pimples", "Clears up most acne blackheads", and similar qualified representations if descriptive of products effective in the treatment or prevention of acne.

Moreover, having signed the Consent Order in this matter, Petitioners waived any right to seek judicial review or otherwise to challenge or contest the validity of the order. 16 CFR 2.32. Accordingly, we do not reach the argument of the denial of due process and equal protection, advanced by the Petitioners.

Nevertheless, it is in the public interest that Petitioners should be permitted to make claims about their products that their competitors may make, if supported by a reasonable basis; including superiority claims, if properly supported by such an authority as the recommendation of the Panel. For example, whatever implications of superiority there may be in a claim that benzoyl peroxide has been found safe and effective by the Panel while an ingredient classified by the Panel as Category II has been found unsafe or ineffective, those implications are adequately substantiated by the findings and conclusions of the Panel. The Order will be modified accordingly. In continuing to require two well controlled doubled-blind clinical studies for all superiority claims not supported by the FDA or its Panel, the Commission, of course, expresses no view on the broader question of whether that level of substantiation would be an appropriate requirement for all comparative claims for all drugs or other products.

Petitioners have failed to show other changes in fact to warrant any other modification of the order.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued April 28, 1980, in Docket No. C-3017 is hereby modified to read as follows:

Order

/

It is ordered that respondents AHC Pharmacal, Inc., a corporation, and James E. Fulton, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondent's officers, agents, representatives, and employees, directly or through any corporation, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of a product variously known as AHC Gel, AHC Phamacal's benzoyl peroxide gel medication and b.p. gel medication (hereinafter "AHC Gel") either alone or as part of "Dr. Fulton's Acne Control Regimen" (hereinafter "the Acne Control Regimen") or any other acne product or regimen will cure acne or any skin condition associated with acne;

2. Misrepresents the extent to which any product has been tested or the results of any such test(s);

B. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of "AHC Gel", either alone or as part of "the Acne Control Regimen", or use of any other acne product or regimen by persons with acne, will result in skin free of pimples, blackheads, whiteheads, other acne blemishes, or scarring,

2. Represents that "AHC Gel", either alone or as part of "the Acne Control Regimen", or any other acne product or regimen, is superior to other over-the-counter acne preparations for the treatment of acne, including but not limited to other benzoyl peroxide products,

unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). ("Competent and reliable scientific or medical evidence" shall be defined as evidence in the form of at least two well-controlled double-blind clinical studies which are conducted by different persons,

independently of each other. Such persons shall be dermatologists who are qualified by scientific training and experience to treat acne and conduct the aforementioned studies. Provided, however, that the findings and conclusions of the FDA Advisory Review Panel on OTC Antimicrobial (II) drugs as published in 47 **Federal Register** 12,430 et seq. (March 23, 1982), unless and until any such finding or conclusion shall be modified by the FDA, and in that event, such finding or conclusion as modified, shall also constitute "competent and reliable scientific or medical evidence.");

C. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance of efficacy of any product or refers or relates to any characteristic, property or result of the use of any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s).

II

It is further ordered that respondents shall forthwith distribute a copy of this order to each of their operating divisions.

III

It is further ordered that each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IV

It is further ordered that such respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for three (3) years, file with the Commission a report, in writing, signed by respondent, setting forth in detail the manner and form of its compliance with this order.

V

It is further ordered that each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB and IC of this order for a period of three (3) years after the dissemination of any advertisement which relates to that portion of the order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written request for such materials.

Petitioners' request for other modification of the Order and for dismissal of the action and vacating of the Order is hereby denied.

It is further ordered that the foregoing modification shall become effective upon service of this Order.

By direction of the Commission. Commissioners Pertschuk and Bailey voted in the negative.

Issued: February 8, 1983.

Benjamin I. Berman,

Acting Secretary.

Dissenting Statement of Commissioner Michael Pertschuk on Order Modification in AHC Pharmacal, Docket No. C-3017

February 9, 1983.

The modified order adopted today by the Commission ostensibly retains the order's provision requiring the petitioner to have clinical tests to prove claims that its product would give buyers a "skin free of blemishes" or that its product is superior to other OTC acne medications. But the Commission now has introduced a large area of uncertainty about which claims require clinical testing by AHC and which claims do not.

Under the proposed modification, petitioner can make any superiority claim which is based on the "findings and conclusions" of the FDA panel. Instead of limiting therapeutic superiority claims to a narrow class of claims which are adequately supported by scientific proof, this order modification threatens to enlarge the "zone of play" in which a seller can make a spurious claim and effectively protect itself from prosecution by cloaking itself in the protective mantle of the FDA panel's findings. It allows advertisers to lift the FDA panel's "findings" out of the narrow specific context in which they were made and use them to make comparisons between products—comparisons which the FDA itself does not allow.

Let me just provide one example. When the FDA finishes its OTC acne drug review, only those products which are found by FDA to be "safe and effective" can be sold. How then is the poor marketer to convince consumers to buy its product rather than its competitors'? Based on the history of OTC drug advertising, I confidently predict that advertisers will resort to spurious differentiations, all of which will imply that their products are actually better than the others. The proposed modification will certainly invite such claims. Take, for example, the following cautiously phrased "finding" of the FDA panel:

The Panel recognizes that acne represents a spectrum of severity * * * The Panel feels that higher concentrations of benzoyl peroxide may be suitable for severe acne or for mila [sic] acne lesions that have not responded to lower concentrations.

What kinds of superiority claims does that "finding" support? How about:

Forget those sissy 2.5 percent benzoyl peroxide solutions! When you're really *serious* about acne, try "Big 10"—the acne medication with more than 3 times as much benzoyl peroxide as the best seller!

Most sufferers of acne would clearly interpret that to mean that the 10 percent solution is much more effective than a 2.5 percent solution. Yet the studies reviewed by the FDA panel found that for most acne sufferers, the 2.5 percent solution of benzoyl peroxide was *just as effective* as the 10 percent solution, while causing less severe and less frequent side effects. But is the claim also supported by the FDA panel's "findings" cited above?

Nor is this concern altogether theoretical. The petition itself states that the requirement to conduct clinical tests to support claims that its product will result "in a skin free of pimples, blackheads, etc. is totally out of touch with the FDA's expert panel's conclusion that benzoyl peroxide containing products can be represented for such results without any testing whatsoever," and "it appears that the very advertising which the Commission complained of in 1978 is now acceptable labeling claims to the FDA's expert panel."

I would support a modification which spells out exactly the types of claims which are supported by the FDA panel's findings. For example, the FDA panel's findings do provide a scientific basis for petitioner—or any other OTC acne drug seller—to claim that products with benzoyl peroxide or sulfur (the only two ingredients found by the FDA to be safe and effective) are therapeutically superior to products with only those ingredients found by the FDA generally not to be safe and effective. The principal deficiency in the Commission's modification is its failure to make clear which claims are supported by the FDA panel and which claims are not. The result is to invite the spurious differentiations discussed above, or, at the least, to leave ourselves open to future disputes which can only be resolved by enforcement proceedings.

In my view, the Commission, in adopting this modification, simply begins to unravel what has been a useful, understandable, and justifiable standard for substantiation of OTC drug comparison claims.

Separate Statement of Commissioner David A. Clanton on Order Modification in AHC Pharmacal, Inc., Docket No. C-3017

The Commission today issued an order modifying the corrective advertising and substantiation requirements of a 1980 Consent Order entered into with AHC Pharmacal, Inc. In a separate statement, Commissioner Pertschuk expresses concern that the newly modified order might give the respondent room to make claims for which there is little or no scientific basis.

In point of fact, the modified order does no such thing. As Commissioner Pertschuk's statement might suggest to the respondent that it is free to make certain claims that are still prohibited, I have taken this opportunity to correct that misimpression.

The original order, entered in 1980, prohibited the respondent from making certain claims unless they were supported by "competent and reliable scientific or medical evidence." No FDA panel had examined the efficacy of acne remedies at that time, so scientific or medical evidence was defined to require two well-controlled clinical studies.

Recently, however, an FDA Advisory Review Panel concluded an investigation and published its findings on the safety and efficacy of various acne remedies. The sole effect of our order modification is to provide that those findings would also be considered "competent and reliable scientific or medical evidence." The FDA panel was composed of leading experts in the field of antimicrobial drugs, and there has been no suggestion anywhere in these proceedings that the panel's findings were incompetent or unreliable. Thus, the respondent may now make a claim if it is supported either by two well-controlled clinical studies *or* by the findings of the FDA panel.

However, it is important to point out that claims which are *not* supported by such evidence are still prohibited. The order should not be read as providing the respondent with a "zone of play," permitting any claim which even looks as though it might be supported by the panel's findings, any more than the original order would have permitted a claim which only looked as though it might be supported by two clinical tests. Unless a claim is in fact confirmed, either by the conclusions of the FDA panel or by two independent clinical tests, that claim is still prohibited.

Thus, I cannot share Commissioner Pertschuk's concern (at p. 2 of his statement) about advertisements which might imply that a 10% benzoyl peroxide solution was generally more effective than a product containing only a 2.5% solution. As Commissioner Pertschuk correctly points out, the FDA panel did *not* find that a 10% solution was more effective that a 2.5% solution for most acne sufferers, so any implied claim to the contrary would not be supported by the panel's findings. Accordingly, any advertisement which made such an implied claim would still violate the order.

The same answer applies to the concern (again at p. 2) that the respondent could argue that the panel's findings would support a claim that the product would result in a skin "free of pimples." The truth is that nothing in the panel's conclusions would support such an unqualified claim. Indeed, this was one of the claims involved in the original complaint, and the Commission's modifying order explicitly states that "the panel's recommendations do *not* support the petitioner's contention" that such a claim would now be permissible. (Order at p. 4; emphasis added). If this were not clear enough, the modifying order later repeats that "none of the recommended representations in the panel's list permits a sweeping, unqualified claim of 'skin free of pimples, blackheads, etc.' " (*Id.*) There thus is no basis for even suggesting that such claims would now be permitted under the modified order.

In short, Commissioner Pertschuk is simply incorrect to the extent that he implies that the modified order might permit any claims, express or implied, that were not directly supported by the panel's findings and conclusions (or by two clinical tests). The petitioner would be well advised not to place any reliance on such suggestions.

[FR Doc. 83-4899 Filed 2-25-83; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

[Docket No. R-83-963]

Manufactured Home Procedural and Enforcement Regulations

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

ACTION: Final rule.

SUMMARY: The Secretary is adopting as final an interim rule which amended the manufactured housing procedural and enforcement regulations to provide every state with a period of five years within which to obtain full approval of its state plan for participation as a State Administrative Agency (SAA). Also adopted in this final rule from the interim rule is a provision which authorizes the Secretary to extend the period during which a state may participate with conditional approval.

EFFECTIVE DATE: April 20, 1983.

FOR FURTHER INFORMATION CONTACT: Tobias A. Gottesman, Director of State and Consumer Liaison Division, Office of manufactured Home Standards, Room 3244, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-6584. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 9, 1982, the Department published an interim rule (47 FR 5887) for immediate effectiveness which amended the manufactured housing procedural and enforcement regulations by revising 24 CFR 3282.302.

The interim rule provided every state with a period of five years within which to obtain full approval of its state plan for participation as a State Administrative Agency (SAA). In addition, the interim rule authorized the Secretary to extend the period during which a state may participate as an SAA with conditional approval. The interim rule invited comments through April 12, 1982. One comment was received. The comment endorsed the rule as a wise and practical measure in view of some states' inability to meet all the requirements for approval as SAA's. Accordingly, this final rule adopts the previously published interim rule without change.

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, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 Seventh 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 by the President 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 the provisions of 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. The rule is limited in its application to state governmental agencies.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.804, Manufactured Housing.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

The interim amendment to 24 CFR Part 3282, published and effective on February 9, 1982 (47 FR 5887), is hereby adopted as final without change.

(Sec. 625, National Manufacturing Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5424])

Dated: February 16, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-4901 Filed 2-25-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Permanent Program Modification From the Commonwealth of Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 946 by adding a permanent program amendment concerning Virginia's reclamation bonding regulations submitted by the State under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director, OSM, has determined that the modification of the Virginia program meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director has approved the Virginia program amendment.

Part 946 of 30 CFR Chapter VII is being amended to implement this decision.

EFFECTIVE DATE: This approval is effective February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1982, Virginia submitted to OSM a proposed program amendment consisting of a General Assembly Bill passed on an emergency basis creating the Coal Surface Mining Reclamation Fund (Fund) and promulgated regulations to implement the legislation (Administrative Record No. VA 401). The proposed program amendment created and implemented an alternative reclamation bonding system in the Virginia program. On September 21, 1982, the Director, OSM, approved the program amendment (47 FR 41556–41558).

On December 20, 1982, Virginia submitted to OSM a proposed program amendment to its reclamation bonding regulations (Administrative Record No. VA 450). The proposed amendment to the Virginia regulations would suspend Section V800.11(c)(1) and the first part of V800.11(c)(2) to allow participants in the Fund to bond increments of a permit area, rather than having to post bond for the entire area before any mining is begun.

OSM published a notice in the **Federal Register** on January 11, 1983, announcing receipt of the amendment, procedures for the public comment period and an opportunity for a public hearing on the substantive adequacy of the amendment (48 FR 1201). The public comment period ended February 10, 1983. A public hearing scheduled for February 7, 1983, was not held because no one expressed a desire to present testimony.

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17, that the program amendment submitted by Virginia on December 20, 1982, meets the requirements of section 509(a) of SMCRA and 30 CFR 800.11.

Disposition of Public Comments

No comments were received from the public on Virginia's proposed program amendment. Comments from Federal agencies were limited and did not identify any specific deficiencies of the proposed program amendment.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, comments were received from the following: Bureau of Mines, Mine Safety and Health Administration and the Army Corps of Engineers.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

On December 8, 1981, the Administrator of the Environmental Protection Agency transmitted her written concurrence on the Virginia permanent program. The amended regulatory provision approved in this document is not an aspect of the Virginia permanent program which relates to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1251), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, Part 946 of 30 CFR Chapter VII is amended as set forth herein.

Dated: February 23, 1983.

J. R. Harris,

Director, Office of Surface Mining.

PART 946—[AMENDED]

Section 946.10 of Title 30 is revised to read as follows:

§ 946.10 State regulatory program approval.

The Virginia State Program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and clarified in a meeting with OSM on September 21 and 22, 1981, and in a letter to the Director of the Office of Surface Mining on October 15, 1981, was

conditionally approved, effective December 15, 1981. Beginning on that date, the Department of Conservation and Economic Development, Division of Mined Land Reclamation, was deemed the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 21, August 19, September 21, December 13, 1982, and January 18, 1983, the program also included program amendments submitted on January 28, July 9, July 8, August 13, and September 30, 1982, respectively. Further, beginning on February 28, 1983, the program includes a program amendment submitted on December 20, 1982.

Copies of the conditionally approved program, as amended, are available for review at:

Virginia Division of Mined Land Reclamation, Drawer U, 630 Powell Avenue, Big Stone Gap, Virginia 24219

Virginia Department of Conservation and Economic Development, 1100 State Office Building, Richmond, Virginia 23219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240

* * * * *

[FR Doc. 83-5031 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

Captain of the Port, San Francisco Bay, California Regulation 83-01; Security Zone Regulations; Approaches to San Francisco Bay and San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around the HMS Brittania and accompanying vessels. The zone is needed to safeguard the HMS Brittania, accompanying vessels, and waterfront facilities against injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on March 3, 1983 or when the HMS Brittania enters United States Territorial Waters off San Francisco, California, whichever occurs last. It terminates on departure of the HMS Brittania from United States Territorial Waters but in no case will its provisions extend beyond April 1, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR Ed Page, Marine Safety Office, San Francisco Bay, (415) 437-3073.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed.

Drafting Information

The drafters of this regulation are LCDR Ed Page, project officer for the Captain of the Port, and LCDR Bill Cassels, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation is planned to occur on March 3, 1983 when the HMS Brittania enters United states Territorial Waters. The security of Her Majesty Queen Elizabeth II and His Royal Highness, Prince Phillip, Duke of Edinburgh and their guests and accompanying vessels is a matter of national importance. A moving security zone around the HMS Brittania will provide Captain of the Port San Francisco Bay, California with the authority necessary to ensure the vessel's safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation: In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.1221 to read as follows:

§ 165.1221 Security Zone: Approaches to San Francisco Bay and San Francisco Bay.

(a) *Location.* The following areas are security zones:

(1) A moving security zone is established around the HMS Brittania in all directions for a distance of 200 yards while the vessel is underway in United States Territorial or Inland Waters.

(2) A group of vessels will accompany the HMS Brittania during its arrival and departure from San Francisco Bay. A moving security zone is established around the HMS Brittania and accompanying vessels for each movement of the HMS Brittania through United States Territorial or Inland Waters. This moving security zone extends out 200 yards on either side of an imaginary line running from a point 200 yards in front of the lead vessel through each of the accompanying vessels to a point 200 yards astern of the last accompanying vessel. The vessels to be included as accompanying vessels will be predesignated by Captain of the Port, San Francisco Bay in a Local Notice to Mariners prior to each movement of the HMS Brittania. The security zone will move with the vessels wherever they may be located.

(3) A security zone is established at Pier 50, San Francisco, California twenty-four hours prior to the arrival of the HMS Brittania and at all times the HMS Brittania is moored thereto. This security zone includes all of Pier 50 and extends into San Francisco Bay into the area bounded by the San Francisco shoreline and a line extending from the Northeast point of Pier 48 due East 600 yards, south 900 yards then west to the Southeast point of Pier 54. The security zones described above will be enforced by Coast Guard vessels and personnel representing Captain of the Port, San Francisco Bay, California.

(b) *Regulations:*

(1) In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

(50 U.S.C. 191; E.O. 10173; and 33 CFR 6.04-6)

Dated: February 8, 1983.

K. F. Bishop, Jr.,

Captain, Coast Guard Marine Safety Office, San Francisco Bay, California.

[FR Doc. 83-5047 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Parts 174, 179, 181, and 183

[CGD 82-010]

Revision of Staff Codes and Addresses

AGENCY: Coast Guard, DOT.

ACTION: Administrative revision; final rule.

SUMMARY: The Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, has recently reorganized. This document revises the staff codes and addresses of the component divisions to reflect structural changes brought about by the reorganization.

EFFECTIVE DATE: These revisions become effective on February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Franseen, Regulatory Coordinator, Boating Safety Division (G–BBS), Room 4224, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. (202) 426–1080.

SUPPLEMENTARY INFORMATION: The Coast Guard uses "staff codes" as an abbreviated means of identifying offices, divisions, and branches within the organizational structure of Coast Guard Headquarters. Staff codes are most commonly used in mailing addresses of correspondence directed to headquarters components. For example, the staff code for the Office of Boating, Public, and Consumer Affairs is "G–B"; its mailing address is "Commandant (G–B), U.S. Coast Guard, Washington, D.C. 20593."

The Office of Boating, Public, and Consumer Affairs, G–B, has recently reorganized. The Boating Technical Division, G–BBT, the Boating Education and Liaison Division, G–BLC, and the Consumer Affairs and Administrative Staff, G–BA, were consolidated into one division, the Boating Safety Division, G–BBS. The Accident Review Branch of the former G–BLC was transferred to the Policy Planning and Evaluation Staff, G–BP. This document revises the staff codes to reflect the above organizational changes. This document also corrects several mailing addresses which have not been updated over several relocations of the headquarters offices.

This final rule is an editorial correction concerning agency organization and has no impact of any kind on the public. Therefore, notice of proposed rulemaking and opportunity for public comment are not required by 5 U.S.C. 553, and good cause exists for making this rule effective less than 30 days after its publication date.

This rule has been evaluated under Executive Order 12291 and DOT Order 2100.5 and has been determined to be non-major and nonsignificant. Since no impact is anticipated, an economic evaluation has not been prepared.

In accordance with Section 605(b) of the Regulatory Flexibility Act (30 Stat. 1164), it is certified that these revisions will have no significant impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this document are Mr. Ray Franseen, Regulatory Coordinator, Office of Boating, Public, and Consumer Affairs, and LT Mark Hanlon, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Parts 174, 179, 181 and 183

Marine safety.

In consideration of the foregoing, Parts 174, 179, 181, and 183 of Title 33, Code of Federal Regulations, is amended as follows:

SUBCHAPTER S—BOATING SAFETY

PART 174—[AMENDED]

§ 174.7 [Amended]

1. In § 174.7 "(GBL/62)" is changed to "(G–BBS)".

§ 174.125 [Amended]

2. In § 174.125 "(G–BLC)" is changed to "(G–BP)".

PART 179—[AMENDED]

§ 179.19 [Amended]

3. In § 179.19 "(BBC)" is changed to "(G–BBS)".

PART 181—[AMENDED]

§ 181.31 [Amended]

4. In § 181.31 "(GBBC)" is changed to "(G–BP)".

PART 183—[AMENDED]

§§ 183.110 and 183.402 [Amended]

5. In the sections listed below, the room number designation "Room 4313, Transpoint Building" is changed to "Room 4210":

§ 183.110

§ 183.402

§ 183.505 [Amended]

6. In § 183.505, the room number designation "Room 4314, Transpoint Building" is changed to "Room 4210".

§ 183.607 [Amended]

7. In § 183.607, the room number designation "Room 4220" is changed to "Room 4210".

(46 U.S.C. 1486; 49 CFR 1.46(n)(1))

Dated: February 17, 1983.

H. W. Parker,

Rear Admiral, Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-5049 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 207

Fishing, Hunting, and Navigation Regulations; Removal and Amendment of Obsolete Provisions

Correction

In FR Doc 83–3738, appearing on page 6706, in the issue of Tuesday, February 15, 1983, on page 6708, correct § 207.614(a) lines 10 through 12 to read as follows: "longitude 118°31.1'W.; thence to latitude 32°58.6'N., longitude 118°30.0'W.; thence to latitude 32°57.9'N., longitude"

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 2274-5]

Approval and Promulgation of Implementation Plans; Revision to Washington State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking addresses State Implementation Plan (SIP) revisions submitted by the State of Washington Department of Ecology (DOE) pursuant to the requirements of Part D of the 1977 Clean Air Act (hereafter referred to as the Act). In today's action, EPA is approving the carbon monoxide (CO) attainment plan for the Seattle nonattainment area and the ozone (O_3) attainment plan for the Seattle-Tacoma nonattainment area.

EFFECTIVE DATE: April 29, 1983.

ADDRESSES: Copies of the materials relevant to the SIP may be examined during normal business hours at:

Central Docket Section (10A–82–1), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Air Programs Branch, M/S 532, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

State of Washington, Department of Ecology, 4224 Sixth Avenue SE., Rowe Six, Bldg. #4, Lacey, WA 98504

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442-4016, FTS: 399-4016.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 1982, the State of Washington DOE officially submitted the 1982 Seattle CO and Seattle-Tacoma O_3 SIP revisions to EPA. This submittal also contained a study plan to develop a CO SIP revision for Tacoma, a new nonattainment area. On October 19, 1982, EPA proposed to approve the SIP revisions, but proposed no action on the plan for developing a CO SIP revision for Tacoma. Additional background information on today's rulemaking can be found in the October 19, 1982 **Federal Register** (47 FR 46549).

II. Response to Comments

A 30-day public comment period was provided on the October 19, 1982, proposed rulemaking. One commentor objected to EPA making the approval of transportation conformity procedures contingent upon adherence to an EPA April 1, 1980 (45 FR 21590), advance notice on conformity. However, EPA approval was not made contingent upon adherence to this April 1, 1980, policy statement, but more correctly contingent upon the adoption of final locally-adopted procedures which would be consistent with the draft local procedures available at the time of the proposed rulemaking.

The commentor also raised procedural objections regarding project level air quality analysis and its relationship to the determination of conformity. The concern revolves around the frequency with which additional project level analysis will be needed to augment plan and program conformity determinations. EPA agrees with the commentor that the vast majority of federally funded transportation projects will not need additional detailed project level analysis for conformity. Only in a few cases, where sufficient information was not available at the time of plan development regarding air quality impacts, would additional technical analysis need to be done to complete the conformity finding. Since the final local conformity criteria and procedures submitted are consistent with the draft provisions and meet the minimum requirements of the Clean Air Act and the January 22, 1981 SIP Policy (46 FR 7182), EPA is approving these procedures.

III. Plan Review

The general requirements for the CO and O_3 SIPs are described in the **Federal Register** published on January 22, 1981 (46 FR 7182). EPA reviewed the SIPs in accordance with those requirements and developed a technical support document for each plan which briefly describes EPA's conclusions regarding each SIP requirement and its approvability. Both plans meet all technical and policy requirements contained in the January 22, 1981 **Federal Register**. This includes a finally adopted procedure to determine conformance of Federal projects with the SIP, which was submitted by DOE on December 1, 1982.

In general, the CO and O_3 SIPs call for expeditious attainment of National Ambient Air Quality Standards (NAAQS) and require reasonable further progress (RFP). Both SIPs include contingency plans to be implemented in the event that RFP is in jeopardy. The principal control measure in both SIPs is a mandatory I/M program which has been operating in the Seattle area since January 1982. A more detailed description of the CO and O_3 SIPs and their adoption can be found in the October 19, 1982 **Federal Register**.

IV. Summary of Rulemaking Action

1. EPA approves the Seattle CO attainment plan submitted by DOE pursuant to Part D requirements. This approval includes a revision to the extension of the attainment date for CO to January 1, 1986.

2. EPA approves the Seattle-Tacoma O_3 attainment plan submitted by DOE pursuant to Part D requirements. This approval includes a revision to the extension of the attainment date for O_3 to July 31, 1984.

Under Executive Order 12291, today's action is not "Major." The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1983. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

This notice of final rulemaking is issued under the authority of Sections 171 through 173 of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7410(a), 7501 through 7503, and 7601(a)).

List of Subjects in 40 CFR Part 52

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

Dated: February 18, 1983.

Anne M. Gorsuch,
Administrator.

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

PART 52—[AMENDED]

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

Subpart WW—Washington

1. In Section 52.2470, paragraphs (c) (33) and (34) are added to read as follows:

§ 52.2470 Identification of Plan.

* * * * *

(c) * * *

(33)(i) On July 16, 1982 the State of Washington Department of Ecology submitted implementation plan revisions which build upon those submitted in May 1979. The revisions include the following elements:

(A) An Ozone attainment plan for the Seattle-Tacoma nonattainment area.

(B) A Carbon Monoxide attainment plan for the Seattle nonattainment areas.

(C) A Carbon Monoxide Study Plan for the Tacoma central business district nonattainment area.

(ii) On February 28, 1983, EPA published final rulemaking action on the Washington SIP as described below:

(A) Approval

(*1*) Seattle-Tacoma Ozone SIP

(*2*) Seattle Carbon Monoxide SIP

(B) No Action

(*1*) Carbon Monoxide Study Plan for the Tacoma central business district nonattainment area.

(34) On December 1, 1982 the State of Washington Department of Ecology submitted, as part of the Seattle-Tacoma O_3 SIP and the Seattle CO SIP, procedures by which conformity of Federal projects with the SIP will be determined. On February 28, 1983, EPA approved the conformity determination procedures.

2. In § 52.2472, paragraphs (c) and (d) are revised to read as follows:

§ 52.2472 Extensions.

* * * * *

(c) The Administrator hereby extends to January 1, 1986 the attainment date for carbon monoxide in the Seattle, Washington, nonattainment areas (Seattle CBD, Northgate, Bellevue, University District) [40 CFR 81.848].

(d) The Administrator hereby extends to July 31, 1984 the attainment date for ozone in the Seattle-Tacoma, Washington, nonattainment area [40 CFR 81.848].

3. Section 52.2478 is amended by revising the introductory text of the section and the "Puget Sound Intrastate AQCR" portion of the table and adding footnotes "l" and "m" to read as follows:

§ 52.2478 Attainment dates for national standards.

The following table presents the latest dates by which the National Air Quality Standards are to be attained. These dates reflect the information presented in Washington's plan.

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_x		NO_x	CO	O_3
	1st	2nd	1st	2nd			
* * * * * * *							
Puget Sound Intrastate AQCR:							
1. Seattle-Tacoma:							
a. Seattle (N. Duwamish) TSP area	f	h	d	d	b	a	—
b. Seattle (S. Duwamish) TSP area	c	h	d	d	b	a	—
c. Seattle CBD, Northgate, Bellevue, University District, CO areas	—	—	—	—	—	l	—
d. Seattle-Tacoma O_3	—	—	—	—	—	—	m
e. Kent TSP area	c	h	d	d	b	a	—
f. Auburn TSP area	c	h	d	d	b	a	—
g. Tacoma TSP area	f	h	d	d	b	a	—
h. Tacoma CBD CO area	—	—	—	—	—	g	—
2. Remainder of AQCR	c	e	d	d	b	k	j
* * * * * * *							

* * * * *

k. * * *

l. January 1, 1986.

m. July 31, 1984.

§ 52.2479 [Amended]

4. Section 52.2479 is amended as follows:

a. In Table 52.2479, insert WAC 173–422 between WAC 173–415 and WAC 173–425; Title: Motor Vehicle Emission Inspection; date of regulation: December 31, 1981; Date of EPA approval: February 28, 1983; **Federal Register** citation: (today's FR citation); applicable sections: all.

b. Table 52.2479 is also corrected as follows:

1. In WAC 173–400, change date of regulation to January 8, 1981.

2. In WAC 173–415, change date of regulation to August 14, 1980.

[FR Doc. 83-4974 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5 FRL 2282-8]

Designation of Areas for Air Quality Planning Purposes; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA is today approving changes to the air quality designation for portions of six Michigan counties: Emmet, Ingham, Kent, Macomb, Mason, and Oakland from nonattainment to attainment of the secondary National Ambient Air Quality Standards (NAAQS) for total suspended particulates (TSP). This revision also changes the air quality designation for a portion of Marquette County from nonattainment to attainment for the ozone NAAQS. This revision to the Michigan State Implementation Plan (SIP) is based on a request from the State to redesignate these areas and on the supporting data the State submitted. Under the Clean Air Act (CAA), air quality designations can be changed if sufficient data are available to warrant such change.

DATE: This action is effective April 29, 1983, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the redesignation requests and the supporting technical information are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604;

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

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written Comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the CAA, the Administrator of EPA has promulgated the NAAQS attainment status for each area of every state. (March 3, 1978, 43 FR 8962; October 5, 1978, 43 FR 45993). These area designations may be revised whenever the data warrant a change in designation. EPA can redesignate an area from nonattainment to attainment based upon the submittal of:

1. At least the most recent eight consecutive quarters of representative, quality assured monitoring data which show no violations of the applicable NAAQS, or

2. At least the most recent four consecutive quarters of representative, quality assured monitoring data which show no violation of the applicable NAAQS and documentation of the occurrence of legally enforceable emission reductions with a demonstration that these reductions are responsible for the air quality improvement.

On May 25, 1982, the Michigan Department of Natural Resources (MDNR) requested the redesignation of portions of Emmet, Ingham, Kent, Macomb, Mason, Muskegon, and Oakland Counties from nonattainment for the secondary NAAQS for TSP to attainment. The request also included the redesignation of a portion of Marquette County from nonattainment and unclassifiable for the ozone NAAQS to attainment. MDNR submitted all available ambient monitoring data to support the request. On June 8, 1982, MDNR withdrew its request to redesignate an area in Muskegon County to attainment for the TSP NAAQS, due to a recently monitored violation of the secondary TSP air quality standard.

A synopsis of each county area, its present status, and EPA's review and rulemaking action is presented below:

1. Emmet County

Approximately six square miles of Emmet County, west of Petoskey, was designated nonattainment for the secondary TSP standards. That designation was based on violations of the TSP standard in previous years

attributable to the activities of the Penn-Dixie Cement Corporation. MDNR requested that the entire county be designated attainment. Redesignation for Emmet County is based on four quarters of data with legally enforceable emission reductions. The reductions occurred at the Penn-Dixie Corporation, the only major TSP source in the county, which has permanently shutdown.

2. Ingham County

A major portion of Ingham County (T4N–R2W, Sections 2–11 and 14–23) was designated nonattainment for the secondary TSP standards. That designation was based on monitoring at 14 sites in the Lansing and East Lansing area. MDNR requested that the entire county be redesignated attainment. Redesignation is approvable because the most recent eight quarters of quality assured monitoring data collected during the years 1979–1981 show no violations of the TSP NAAQS. The available monitors in these counties were determined to be representative of the area's air quality, based on a review of the emission inventories and other information.

3. Kent County

A major portion of Kent County (T7N–R11W, Sections 19, 30, and 31, T7N–R12W, Sections 22–27 and 34–36) was designated nonattainment for the secondary TSP standards. That designation was based upon monitoring conducted in the Grand Rapids metropolitan area. MDNR requested that the entire county be redesignated attainment. Redesignation is approvable because the most recent eight quarters of quality assured monitoring data collected during the years 1979–1981 show no violations of the TSP NAAQS. The available monitors in these counties were determined to be representative of the area's air quality, based on a review of the emission inventories and other information.

4. Macomb County

Approximately a third of Macomb County, South of 20 Mile Road (Hall Road extended) (T4N–R14E, Sections 27, 28, 33, and 34) was designated nonattainment for the secondary TSP standards. That designation was based upon monitoring results from a number of sites located throughout the county.

MDNR requested that the southern third of Macomb County be redesignated attainment, while maintaining the nonattainment area surrounding the city of New Haven, defined at T4N–R14E, Sections 27, 28, 33, and 34. Redesignation is approvable because the most recent eight quarters of quality assured monitoring data collected during the years 1979–1981 show no violations of the TSP NAAQS. The available monitors in these counties were determined to be representative of the area's air quality, based on a review of the emission inventories and other information.

5. Mason County

Approximately four square miles of Mason County (T18N–R18W, Sections 13, 14, 23, and 24) was designated nonattainment for the secondary TSP standards. That designation was based upon exceedances of the TSP standard through 1977 at two monitoring sites. MDNR requested that the entire county be redesignated attainment. Redesignation is approvable because the most recent eight quarters of quality assured monitoring data collected during the years 1979–1981 show no violations of the TSP NAAQS. The available monitors in these counties were determined to be representative of the area's air quality, based on a review of the emission inventories and other information.

6. Oakland County

A portion of the city of Pontiac and the southeastern corner of Oakland County (T3N–R10E, Sections 15, 16, 21, 22, 27, and 28; Coolidge, Campbell and Dequindre Rd) were designated nonattainment for the secondary TSP standards. Part of that designation was based upon 1977 exceedances at the monitoring site downwind from all major industrial activity, site 63–005. The designation of the southeast corner of Oakland County was based on exceedances recorded in Macomb and Wayne Counties. MDNR requested that the entire county be redesignated attainment (Redesignation to attainment status was requested for that portion of Macomb County which lies adjacent to Oakland County). Redesignation is approvable because the most recent eight quarters of quality assured monitoring data collected during the years 1979–1981 show no violation of the TSP NAAQS. The available monitors in these counties were determined to be representative of the area's air quality, based on a review of the emission inventories and other information.

The NAAQS for ozone has a significantly different format from the NAAQS for TSP. Therefore, the criteria for redesignation of areas are also different. For ozone, a redesignation to attainment generally requires three years of data. The expected annual number of exceedances, as calculated from these data, should be 1.0 days or less. (The details of the calculation of

expected exceedances are given in *Guideline for the Interpretation of Ozone Air Quality Standards*, EPA 450/4 79-003.)

7. Marquette County and Other Counties in Michigan's Upper Peninsula

Marquette County was designated nonattainment and the remainder of Michigan's Upper Peninsula was designated unclassifiable with respect to the ozone standards. That designation was based on violations of the previous .08 ppm ozone standard recorded in Marquette County. MDNR requested that the entire Upper Peninsula of Michigan be redesignated to attainment. Redesignation of Marquette County is based on data which showed no exceedances of the current .12 ppm ozone NAAQS in Marquette County from 1979 to 1981 inclusive. Thus, the expected annual number of exceedances is 0.0. Redesignation of Michigan's Upper Peninsula is based on the current .12 ppm ozone standard. The monitoring in Marquette County implies that no long-range transport of ozone concentrations above .12 ppm is occurring into any part of the Upper Peninsula. Also, because Marquette County is the most populated County in the Upper Peninsula (1980 population: 72,593; the second most populous County had a 1980 population of 37,839), the absence of violations in Marquette County implies that the other counties in the Upper Peninsula can be assured also not to be generating excursions of the .12 ppm ozone standard.

EPA has reviewed Michigan's May 25, 1982 request to redesignate portions of Emmet, Ingham, Kent, Macomb, Mason and Oakland Counties from secondary nonattainment to attainment for TSP; and Marquette County from nonattainment to attainment for ozone. The proposed redesignations are consistent with EPA's policy for redesignations under Section 107 of the CAA. Therefore, EPA is today approving MDNR's redesignation requests for the counties listed above.

EPA's review also discovered errors in § 81.323 of Part 81 of chapter 1, Title 40, Code of Federal Regulations. The designation of areas for air quality planning purposes listing also omitted the revisions in EPA's final rulemaking July 27, 1981 (46 FR 38387).

Because EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on April 29, 1983. However, if we receive notice by March 30, 1983 that someone wishes to submit critical comments, then EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under 5 U.S.C. § 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: February 18, 1983.

Anne M. Gorsuch,
Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Subpart C—Section 107 Attainment Status Designation

Section 81.323 of Part 81 of Chapter 1, Title 40, Code of Federal Regulations is amended. In the table for "Michigan—TSP", the entry for portions of Emmet, Ingham, Kent, Macomb, Mason and Oakland Counties should be revised to read as follows:

§ 81.323 Michigan*.

* This codification updates and amends previous county TSP attainment status designations.

MICHIGAN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * * * *				
AQCR 82 (Michigan Portion)				X.
AQCR 122—Except subareas defined				X.
1. Genesee County:				
a. Starting on Industrial Avenue, north to Stewart Avenue, east to Hitchcock Street, south to Olive Avenue (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Avenue.	X			
b. Starting on Industrial Avenue, north to Pierson Road, east to Dort Highway, south to Hitchcock Street, south to Olive Avenue (extended), south to Robert T. Longway Boulevard, west and southwest to Industrial Avenue.		X		
2. Lapeer County: T7N–R12E, that portion of Section 17 which lies south of M–21 and east of Fairground Road.	X			
3. Midland County: R2E, T14N, Sections 14–16, 21–23, 26–28 and 33–35.		X		
4. Muskegon County: R16W, T9N, Sections 5 and 6 R16W, T10N, sections 21, 22 and 27–34.		X		
5. Saginaw County:				
a. Starting at Tittabawassee Road, east to I–75, east and south to Washington Avenue, west to 6th Street, north to Carrollton Street, northeast to Zilwaukee Street, north to Westervelt Street, north to Tittabawassee Road.	X			
b. Northeast Section: Starting on Titabawassee Road, east to I–75, south to Wadsworth Avenue, west to I–675, west and north to Tittabawassee Road.		X		
c. Southwest Section: T12N–R4E, the eastern half of Section 34 (that which is east of Maple Street) and Section 35.		X		
AQCR 123—Except subareas defined				X.
1. St. Clair County: R17E, T6N, Sections 2–4, 9–11, 14–16, 21, 22 and 28.		X		
2. Wayne County:				
a. Area included within: Lake St. Clair to 8 Mile Road to Schaefer Road to McNichols Road to Greenfield Avenue to Schoolcraft Avenue to Evergreen Road to Joy Road to Telegraph Road to Ford Road to Beech-Daly Road to Cherry Hill Road to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Ecorse Road to Haggerty Highway to Tyler Road to Belleville Road to I–94 to Rawsonville Road to Oakville-Waltz Road to Will-Carlton Road to the Huron River to Lake Erie except for the subarea under b.		X		
b. Area included within: Lake St. Clair-Moross Road to 7 Mile Road to Van Dyke Road to 8 Mile Road to Wyoming Road to 7 Mile Road to Schaefer Road to Fenkell Road to Greenfield Avenue to Joy Road to Southfield Expressway to Ford Road to Telegraph Road to Cherry Hill Road to Beech-Daly Road extended to Michigan Avenue to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Pennsylvania Road to Middle Belt Road to Sibley Road to Telegraph Road to King Road to Grange Road to Sibley Road to Jefferson Avenue to Bridge Street (Gross 11e) extended to Detroit River.	X			
AQCR 124—(Michigan Portion) Except subareas defined by following townships.				X.
1. Monroe County:				
a. Starting where Sandy Creek empties into Lake Erie, northwest to Maple Avenue (extended NNE), southwest to Elm Avenue, west to Herr Road, south to Dunbar Road, and east to Plum Creek (which empties into Lake Erie).	X			
b. T5S–R10E, Sections 8, 9, 15–17		X		
AQCR 125—Except subareas defined				X.
1. Calhoun County: RSW, T2S, Section 34		X		
AQCR 126—Except subareas as defined				X.
1. Delta County R22W, T39N, Sections S½ 17, S½ 18, 19; and 30.		X		
2. Manistee County: R16W, T21N, Sections 7, 18 and 19, R17W, T21N, Sections 12 and 13.		X		
3. Marquette County: R25W, T48N, Sections 1 and 2			X	
* * * * * * *				

Section 81.323, Part 81, Title 40 CFR is amended. In the table for "Michigan —O_3", the entry for a portion of Marquette County should be revised to read as follows:

* * * * * * *

MICHIGAN —O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
AQCR 126—Except subareas defined.		X.
1. Marquette County		X.
* * * * * * *		

[FR Doc. 83-4763 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 260

[SWH-FRL 2311-7]

Hazardous Waste Management System, General

AGENCY: Environmental Protection Agency.

ACTION: Public notice of rulemaking petitions filed with EPA concerning the Resource Conservation and Recovery Act.

SUMMARY: This notice sets forth a list of petitions received in response to the regulations implementing the hazardous waste management system established by the Resource Conservation and Recovery Act (RCRA). Petitions cover both requests to make general changes to the regulations and specific requests to exclude, on a site-specific basis, wastes from regulation as hazardous. This notice updates the **Federal Register** of Thursday, August 19, 1982 (47 FR 36162) and provides a list of all petitions received by the Agency subsequent to that publication as of December 31, 1982. This notice informs the public of the receipt and purpose of each petition and thereby allows interested parties to comment or respond on appropriate petitions.

FOR FURTHER INFORMATION CONTACT: For further information on any of these petitions, the reader should contact Matthew Straus at (202) 382–4770.

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA promulgated the first phase of regulations implementing the hazardous waste management system established by Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") by publishing 40 CFR Parts 260 to 265 and 122 to 124. Among other things, these regulations set forth informal rulemaking procedures whereby persons may (1) petition the Administrator to modify or revoke any provisions in 40 CFR Parts 260 through 265 (see 40 CFR 260.20); (2) petition the Administrator to add new testing or analytical methods

to Parts 261, 264, or 265 if the person demonstrates that the proposed method is equal to or superior to the corresponding method prescribed in Parts 261, 264, or 265 (see 40 CFR 260.21); or (3) petition the Administrator to obtain, on a site-specific basis, an exclusion of his listed waste from regulation as hazardous (see 40 CFR 260.22).

The Agency began publishing in the **Federal Register** on December 7, 1981 (46 FR 59537) a list of all petitions filed with the Agency under either 40 CFR 260.20, 260.21, or 260.22 which covers petitions received from July 1980 to October 31, 1981. Two additional lists have been published since then: one appeared in the **Federal Register** on March 3, 1982 (47 FR 9007) and covers petitions received from November 1, 1981 to January 31, 1982 while the other notice was published in the **Federal Register** on August 19, 1982 (47 FR 36162) and covers petitions received from February 1, 1982 to June 30, 1982. This notice is the fourth and updates the August 19, 1982 **Federal Register** notice by providing a list of all petitions received by the Agency subsequent to that publication as of December 31, 1982 and provides a brief summary of the substance of the petitions.

Dated: February 18, 1983.

Michael A. Brown,

Acting Assistant Administrator for Solid Waste and Emergency Response.

I. Petitions Filed Under 40 CFR 260.20 and 260.21 (General Rulemaking and Petitions for Equivalent Testing or Analytical Methods).

No petitions were received.

II. Petitions Filed Under 40 CFR 260.22 (Petitions to Amend Part 261 to Exclude Waste Produced at a Particular Facility).

Log No.	Company	Address	Waste listings to be excluded
360	Burndy Corp	Box 95, Lincoln, NH 03251	F006.
361	General Electric Controls, Inc	P.O. Box 328, Vega Alta, PR 00762	F006.
363	Raybestos Industrial Products Co	P.O. Box 5205, North Charleston, SC 29406	F002.
364	Emerson Electric Co., White-Rodgers Div	Box 2117, Batesville, AR 72501	F006.
366	National Steel Corp., Midwest Steel Div	Route 12, Portage, IN 46368	F006.
367	National Steel Corp., Midwest Steel Div	Route 12, Portage, IN 46368	F063.
368	National Steel Corp., Weirton Steel Div	Three Springs Drive, Weirton, WV 26062	F006.
369	Pamcor, Inc	P.O. Box AC, Rio Piedras, PR 00928	F006.
370	General Motors Corp., GM Assembly Div	Lordstown Plant, P.O. Box 1406, Warren, OH 44482	F006.
371	NSM, Inc	1617 Water St., P.O. Box 78, Peru, IL 61354	F006.
372	General Motors Corp., GM Assembly Div	Lakewood Plant, P.O. Box 16505, Atlanta, GA 30321	F006.
373	Merck & Co., Inc., Stonewall Manufacturing Facility	U.S. Highway 340 South, P.O. Box 7, Elkton, VA 22827	Incinerator fly ash.
374	Gulf Oil Chemicals Co., U.S. Operations	P.O. Box 509, Baytown, TX 77520	Chromium bearing wastes.
375	Crane Co	Airport Road, Jonesboro, AR 72401	F006.
376	R. J. Reynolds Tobacco Co	401 N. Main St., Winston-Salem, NC 27102	F006.
377	Merck & Co., Inc., Stonewall Manufacturing Facility	U.S. Highway 340 South, P.O. Box 7, Elkton, VA 22827	Incinerator bottom ash.
378	General Motors Corp., Fisher Body Div	401 Verlinden Ave., Lansing, MI 48904	F006.
379	Special Metals Corp	Middle Settlement Road, New Hartford, NY 13413	K062.
381	Olin Chemical Corp	P.O. Box 2898, Lake Charles, LA 70602	F005.
382	Sun Refining & Marketing Co	P.O. Box 920, Toledo, OH 43693	K048, K049, K051.
383	Koch Refining Co	P.O. Box 2608, Corpus Christi, TX 78403	K048, K051.
384	Visador Co	940 Visador Road, Jasper, TX 75951	F001, F002.
385	Ashland Petroleum Co., Canton Refinery	P.O. Box 391, Canton, OH 44706	K048, K049, K050, K051
386	Amoco Oil Co., Mandan Refinery	P.O. Box 549, Mandan, ND 58554	K049, K050, K051, K052.
388	General Motors Corp., Chevrolet Motor Div	300 N. Chevrolet Ave., Flint, MI 48555	F006.
389	Sandvik, Inc., Steel Div	P.O. Box 1220, Scranton, PA 18501	K062.
390	Metropolitan Sewer District	1600 Gest St., Cincinnati, OH 45204	Incineration bottom ash.
391	E.I. DuPont de Nemours & Co., Inc	Experimental Station, Wilmington, DE 19898	Incineration ash.
392	PEC Industries	5780 Carrier Drive, Orlando, FL 32809	F006.
393	Boeing Commercial Airplane Co	Auburn Plant, 700-15th St., SW., Auburn, WA 98002	F006.
394	Chevron USA, Inc., Cincinnati Asphalt Refinery	11001 Brower Road, P.O. Box 96, North Bend, OH 45052.	K051.
395	General Electric Co., Inc	South 4th St., P.O. Box 389, Selmer, TN 38375	F006.
396	Exxon Company, USA, Baton Rouge Refinery	4045 Scenic Highway, Baton Rouge, LA 70805	K048.
397	Beech Aircraft Corp	P.O. Box 9631, Boulder, CO 80301	F019, K062.
398	U.S. Brass, Wallace Murry Corp	901-10th St., Plano, TX 75074	F006.
399	Texas Instruments	P.O. Box 226015, Dallas, TX 75266	F006.
400	H-Coal Synthetic Fuel Pilot Plant	Catlettsburg, KY 41129	Petitioner requested delisting of a non-listed waste.
401	Pacific Wood Treating Corp	111 W. Division St., Ridgefield, WA 98642	K001 (Incinerator ash).
402	Martin Marietta	Aerospace Manufacturing Plant, 498 Oak Road, Ocala, FL 32670.	F006.
403	General Electric Protective Devices, Inc	P.O. Box 9069, Humacao, PR 00661	F006.
404	Conversion Systems, Inc	Caernarvon Township, Lancaster County, PA	K002, K003, K004, K005, K006, K007, K008, K048, K049, K050, K051, K052, K061, K062, K063, K064, K065, K066, K067, K068, K069, F006, F008, F010, F012, F013, and F016.
405	Martin Marietta Aerospace	P.O. Box 5837, Orlando, FL 32825	F006.
406	Diamond Chrome Plating Co	604 S. Michigan Ave., Howell, MI 48843	F006.
407	Navajo Refining Co	501 E. Main St., Artesia, NM 88210	K049, K050, K051.
408	Eaton Corp., AIL Div	Commack Road, Deer Park, NY 11729	F006.
409	Texas Eastman Co., A Div. of Eastman Kodak Co	P.O. Box 7444, Longview, TX 75607	K009, K010.
410	General Motors Corp., Fisher Body Div	Flint Plant, 4300 S. Saginaw St., Flint, MI 48557	F006.
411	Russell, Burdsall & Ward, Inc., Mentor Facility	8100 Tyler Blvd., Mentor, OH 44060	F006.
412	Chem-Clear, Inc	11800 S. Stony Island Ave., Chicago, IL 60617	Stabilized waste F006.
413	IMPEX, Div. of Keystone Industries	905 Louise Ave., Crawfordsville, IN 47933	F006.
414	ITT—Hancock Div	10161 N. Roscommon Road, Roscommon, MI 48653	F006.
415	Tecumseh Products, Lauson Engine Div	1604 Michigan Ave., New Holstein, WI 53061	F006.
416	Star Expansion Industries Corp	Route 32, Pleasant Hill Road, Mountainville, NY 10953	F006.
417	Dresser Industries, Inc	Defiance Plant, Hickory St., Box 407, Defiance, OH 43512.	F006.
418	Franklin Electric Co., Inc	Redmond Road, P.O. Box 877, Jacksonville, AR 72076	F002, F003, F004, F005.
419	Oxford Co., Square D Co	5735 College Corner Road, Oxford, OH 45056	F006.
420	Gould, Inc., Foil Div	35129 Curtis Blvd., Eastlake, OH 44091	F006.

Log No.	Company	Address	Waste listings to be excluded
421	Exxon USA	P.O. Box 163, Billings, MT 59103	K048.
422	Rockwell International, Inc	Highway 332 East, Grenada, MS 38901	F006.
423	Quanex Corp., Michigan Seamless Tube Div	400 South McMunn, South Lyon, MI 48178	K063.
424	General Motors Corp., Harrison Radiator Div	Moraine Plant, P.O. Box 824, Dayton, OH 45401	F006, F009, F012, F019, K062.
425	Western Electric	777 North Blue Parkway, Lee's Summit, MO 64063	F006.
426	Sigmor Refining Co., Three Rivers Refinery	P.O. Box 490, Three Rivers, TX 78071	K048, K049, K051.
427	Stauffer Chemical Co	Le Moyne Plant, P.O. Box 100, Axis, AL 36505	K071.
428	General Motors Corp., Saginaw Steering Gear Div	Lime Stone County Complex, U.S. Highway 31 North, Athens, GA 35611.	F006.
429	General Motors Corp., Saginaw Steering Gear Div	Holland Road Complex, 3900 Holland Road, Saginaw, MI 48605.	F006.
430	Grumman Aerospace Corp	Bethpage, NY 11714	F006.
431	U.S. Dept. of the Army	Watervliet Arsenal, Watervliet, NY 12189	F006.
432	General Motors Corp., Saginaw Steering Gear Div	Plant #2, 1400 Holmes St., Saginaw, MI 48602	F006.

[FR Doc. 83-4969 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

Oil and Gas Leasing; Noncompetitive Leasing of Acquired Military Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Lifting of moratorium.

SUMMARY: The Department of the Interior is further lifting its November 1, 1979, moratorium on the issuance of noncompetitive oil and gas leases for Federal lands acquired for military or naval purposes, and on the receipt of applications for such leases. This lifting of the moratorium applies to all lands for which applications were filed prior to September 21, 1978, except those lands in Fort Chaffee, Arkansas, for which applications were filed. The applied for Fort Chaffee lands are subject to further litigation and remain under moratorium.

EFFECTIVE DATE: December 21, 1982.

FOR FURTHER INFORMATION CONTACT: Lois Mason, Division of Oil, Gas, and Geothermal, Bureau of Land Management, (202) 343-7753.

SUPPLEMENTARY INFORMATION: On November 1, 1979, a moratorium was imposed on the issuance of noncompetitive oil and gas leases for the approximately 6.6 million acres of Federal land acquired for military or naval purposes, 44 FR 64085 (November 6, 1979). Consistent with that moratorium, the application of 43 CFR Part 3110 to such lands was suspended and no noncompetitive lease applications were accepted for such lands. That moratorium was rescinded on July 20, 1981, 46 FR 37250, for all acquired military lands, except those for which applications were filed prior to September 21, 1978. This latter category of lands was to remain under moratorium pending the outcome of the U.S. Court of Appeals for the District of Columbia decision in *Texas Oil and Gas Corporation* v. *Watt.*

This decision was made on June 11, 1982, when the Court of Appeals decided to reverse the judgments of the district court which had upheld the decisions of the Secretary dated November 1, 1979. The Secretary had canceled oil and gas leases issued to Texas Oil and Gas Corporation ("TXO") for parcels of land at Fort Chaffee, Arkansas; rejected TXO's outstanding lease applications for lands at Malmstrom Air Force Base in Montana; and declared a moratorium on oil and gas leasing of all lands acquired by the Federal Government for military or naval purposes.

The Court of Appeals held that the Fort Chaffee leases must be reinstated and that the Malmstrom applications must have priority over junior applications if the Secretary proceeded with regular noncompetitive leasing. Since the leasing moratorium had been partially rescinded, that issue became moot and the Court of Appeals did not address it. There was no petition to the U.S. Supreme Court for review of the Court of Appeals decision, and the appeal to the U.S. Court of Appeals for the Tenth Circuit has been withdrawn in the related case of *Amoco Production Corporation* v. *Watt.*

Accordingly, the Secretary has rescinded the moratorium by memorandum to the Director, Bureau of Land Management, dated December 21, 1982, on those lands in which applications were filed prior to September 21, 1978. Lands which were applied for prior to September 21, 1978, are subject to lease to the first qualified offeror. Where no such valid qualified applicants exist, the lands will be leased to the first qualified offeror that filed a valid application between September 21, 1978, and November 1, 1979, or, absent such valid offer, the lands will be offered for oil and gas lease through the simultaneous oil and gas (SOG) leasing system pursuant to the provisions of 43 CFR 3112.1-1.

With regard to reinstatement of the TXO leases in Fort Chaffee, no action will be taken at this time. These canceled leases are now subject to further litigation in *ARKLA Exploration Company* v. *Watt*, Civil No. 82-2163 (W.D. Ark.). Upon resolution of this litigation, appropriate action, based on advice from the Office of the Solicitor, will be taken on these leases and the public so notified.

Dated: February 16, 1983.

David C. Houston,

Acting Assistant Secretary, Land and Water Resources.

[FR Doc. 83-5009 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 25

Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs; Schedule of Moving Expense Allowances; Individuals and Families

Correction

In FR Doc. 83-1881 beginning on page 3759 in the issue of Thursday, January 27, 1983, make the following changes on page 3762:

1. In the column designated "State", the footnote designation in the entry for New Hampshire should read "9" instead of "3".

2. For Ohio, in the next to the last column, the number "1" should not have appeared.

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-4a)]

Forced Sale Procedures for Bankrupt Railroad Lines

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Interim Rules and Request for Comments.

SUMMARY: Section 213 of the Rail Safety and Service Improvement Act of 1982, Pub. L. No. 97-468, amended section 17(b) of the Milwaukee Railroad Restructuring Act [45 U.S.C. 915(b)] which deals with the sale or transfer of lines of railroads subject to liquidation. Specifically, the Commission is empowered to prescribe terms, including compensation, for the sale of lines over which no service is being provided by the owner, upon the request of a financially responsible offeror whose offer to purchase has been rejected by the trustee. When more than one offeror participates in a proceeding, the Commission is authorized to select an offeror based on a public interest standard.

To effectuate these new provisions the Commission must adopt regulations by February 28, 1983. Therefore, we are adopting interim rules (attached as an Appendix to this notice).

DATES: The interim rules shall become effective on February 28, 1983 (the effective date of the new act). Comments should be submitted on or before March 30, 1983.

ADDRESS: Send comments referring to Ex Parte No. 282 (Sub-No. 4a) (original and 15 copies) to: Rail Section Room 5417, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245. Wayne A. Michel, (202) 275-7657. Frederick T. Stocker, (202) 275-7988.

SUPPLEMENTARY INFORMATION: Additional information concerning the specifics of section 213 of the Rail Safety and Service Improvement Act of 1982 and these interim regulations is in the Commission decision served concurrently with this publication. To obtain a copy of the decision, write to: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call 202-275-7428.

We adopt the interim regulations as set forth in the appendix, and we will operate under these rules until further notice.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources. Adoption of these rules on an interim basis is required to carry out the purpose, findings, and changes made by the Rail Safety and Service Improvement Act of 1982, Pub. L. No. 97-468.

(49 U.S.C. 10321 and 5 U.S.C. 553)

List of Subjects in 49 CFR Part 1180

Administrative practice and procedures, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: February 18, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1180—[AMENDED]

49 CFR Part 1180 is amended as follows:

New Subpart C is added to read as follows:

Subpart C—Forced Sale Procedures for Bankrupt Railroad Lines

Sec.

1180.40 Purpose and scope.
1180.41 Submission and contents of offer.
1180.42 Commission's 15 day determination.
1180.43 Agreement between the parties.
1180.44 Failure to reach an acquisition agreement.
1180.45 Requests to set the terms.
1180.46 Multiple offer procedures.
1180.47 Transmission of the Commission's prescribed terms to the court.
1180.48 Special provision concerning these forced sale proceedings.
1180.49 Definitions for Subpart C.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Subpart C—Forced Sale Procedures for Bankrupt Railroad Lines

§ 1180.40 Purpose and scope.

Under 45 U.S.C. 915, the Commission can require the sale of certain rail lines to a financially responsible person. To be eligible for such sale the line must be (a) owned by a carrier in liquidation and (b) the owner must not be providing service. Further, the offeror must first have made an offer to the trustee in bankruptcy and the trustee must have rejected that offer.

§ 1180.41 Submission and contents of offer.

(a) An offeror shall serve its application (an original and 10 copies) upon the Commission (with a copy to the Deputy Director, Rail Section, Room 5417), the trustee, and the court. In addition, the offeror shall make a good faith effort to determine whether any other offers for all or part of the line(s) in question has been made to the trustee. If other offers have been made, the offeror shall, concurrent with its filing at the Commission, serve copies of its application upon those other offerors, including persons whose offers are still pending with the trustee.

(b) The offeror shall (1) Identify the line(s) in question; (2) certify that the trustee has rejected its offer and indicate what that offer was; (3) certify that it has concurrently served copies on the trustee, court, and all other known offerors; (4) state its offering price; and (5) offer evidence indicating that it is financially responsible.

§ 1180.42 Commission's 15 day determination.

(a) The Commission (Director, Office of Proceedings) shall, within 15 days of the filing of the application, determine whether the applicant is a financially responsible person and has made a *bona fide* offer to acquire the line or lines under reasonable terms. If the Commission makes these findings, the offeror and the trustee shall enter into negotiations. If the Commission fails to make either of these findings, the application shall be dismissed.

(b) Appeals to dismissal of an application pursuant to the preceding paragraph will be governed by the rule set forth in 49 CFR 1011.7(b)(1), pertaining to appeals from decisions of employees under delegated authority. An original and 10 copies of all appeals, and replies to appeals should be filed with the Commission.

§ 1180.43 Agreement between the parties.

If at any time the parties reach a voluntary agreement, a request for approval shall be filed with the Commission and the court, and the parties must comply with the regulations governing the acquisition of lines of railroads in reorganization which are set forth in subpart B of this part.

§ 1180.44 Failure to reach an acquisition agreement.

(a) If the trustee and any financially responsible offeror fail to agree on the amount or terms of acquisition within 30 days of the commencement of negotiations, either party may, within 60 days after the conclusion of the unsuccessful negotiations, request the Commission to prescribe terms for acquisition, including compensation, for the line or lines to be acquired. Requests for prescription of terms shall be served on all other parties.

(b) If no requests for prescription of terms of acquisition are received by the Commission within 60 days of the unsuccessful conclusion of negotiations, the proceeding shall be terminated, and the application dismissed.

§ 1180.45 Requests to set the terms.

(a) If the Commission is requested to prescribe conditions and compensation, it shall issue its decision setting the terms and conditions within 60 days of the request.

(b) Any party filing a request shall set forth in detail in its request information showing the value of the line and any other information necessary to support the request for conditions, and will serve the request on all parties of record.

(c) Other parties will have 30 days to submit their supporting or opposing views to the Commission and the initial offeror.

(d) The party filing the initial request will have 10 days to respond to any pleadings submitted pursuant to paragraph (c) of this section.

(e) In its decision, the Commission will establish the amount of compensation (which in no case will be less than the constitutional minimum value of the line as defined in 49 U.S.C. 10910) and set other conditions as needed. This decision will be binding on both parties except that the offeror may withdraw its offer no later than 10 days after the date the Commission's decision is served, by notifying, in writing, the Commission and all other parties to the proceeding. If there are no other offerors who are parties to the proceeding and are willing to accept the terms, the proceeding shall be terminated, and the application dismissed.

§ 1180.46 Multiple offer procedures.

(a) Concurrent with the filing of the application, the initial offeror is required to make a good faith effort to identify and serve all other persons who either had previously made offers for all or part of the line or have offers currently pending with the trustee.

(b) Within 10 days of the filing of the application any other parties interested in making offers for all or part of this line must file an application (an original and 10 copies) with the Commission (with a copy to the Deputy Director, Rail Section, Room 5417), the trustee, the initial offeror, and the court. That application must: (1) Identify the line; (2) indicate whether an offer had ever been made to the trustee and, if so, the status of the offer; (3) state the offering price and show why it is reasonable; (4) contain evidence indicating that the offeror is financially responsible; and (5) contain a statement certifying the offeror has complied with the service requirements.

(c) Within 15 days of the filing of the first application, the Commission (Director, Office of Proceedings) shall determine whether the offerors are financially responsible. Any offeror who is found financially responsible may negotiate with the trustee and has the same right to reach an agreement with the trustee as the first offeror. Any offeror who is not found to be financially responsible may not further participate in the proceeding, and its application will be dismissed.

(d) Appeals to dismissal of an application pursuant to the preceding paragraph will be handled in the manner indicated in § 1180.42(b).

(e) If an agreement is reached between the trustee and *any* offeror, the provisions of § 1180.44 apply.

(f) If no offeror reaches an agreement with the trustee during the negotiation period, any offeror or the trustee may request the Commission to prescribe the terms of and set conditions for acquistion. If no request is made, the proceeding will be terminated, and all applications dismissed.

(g) If more than one offeror is participating in a proceeding under these regulations, the Commission's decisions setting terms and conditions will select the offeror and be based on which offer best serves the public interest.

(h) Within 10 days of the service of the Commission's decision setting the terms, all offerors, even those not initially chosen by the Commission, shall notify the Commission in writing of their willingness to accept the terms. An offeror's failure to notify the Commission of its acceptance of the terms or its refusal to accept the prescribed terms will result in that offeror being excluded from further consideration as a potential purchaser.

(i) If the originally selected offeror refuses to accept the terms, the Commission will immediately choose a purchaser among those *bona fide*, financially responsible offerors who have accepted the terms. That choice will also be based on an analysis of the public interest.

(j) If there are no such offerors willing to accept the terms, the proceedings shall be terminated, and all applications dismissed.

§ 1180.47 Transmission of the Commission's prescribed terms to the court.

Within 15 days after the Commission prescribes conditions and compensation for acquisition, and those terms are accepted by an offeror, the Commission shall transmit such terms to the court.

§ 1180.48 Special provisions concerning these forced sale proceedings.

(a) Any person acquiring a line or lines under these regulations shall use, to the maximum extent practicable, employees or former employees of the carrier subject to liquidation in the operation of service on such line or lines.

(b) No person acquiring a line under these regulations may transfer or discontinue service on the line for 4 years after acquisition.

(c) Commission approval of acquisitions under these regulations obviates any need for the parties to seek further Commission approval under 49 U.S.C. 10901 or 11343 to consummate the transaction and/or institute service.

(d) If a party to an acquistion agreement approved under these regulations defaults on the obligations thereunder, then the other party to the agreement shall promptly inform the Commission. Upon notification, the Commission will take appropriate action.

(e) The Commission's prescription of conditions and compensation, once accepted by an offeror, is final. Administrative appeals will not be entertained.

§ 1180.49 Definitions for subpart C.

(a) Carrier subject to liquidation. A carrier which on January 14, 1983, was the subject of a proceeding pending under section 77 of the Bankruptcy Act or under subchapter IV of Chapter 11 of Title 11, United States Code, and which has been ordered by the court to liquidate its properties.

(b) The court. The court having bankruptcy jurisdiction over the carrier subject to liquidation.

(c) Financially responsible person. A person capable of compensating the carrier subject to liquidation for the acquisition of the line or lines proposed to be acquired and able to cover expenses associated with providing service over such line or lines for a period of not less than four years.

[FR Doc. 83-4993 Filed 2-25-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 30223-28]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of adjustment of quotas.

SUMMARY: NOAA issues this notice of adjustment of quotas for the surf clam and ocean quahog fisheries for 1983. The quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1983.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Bruce G. Nicholls, Surf Clam Management Coordinator, 617-281-3600.

SUPPLEMENTARY INFORMATION: Amendment 3 to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries (FMP) was implemented by final rules published on January 29, 1982 (47 FR 4268). One of the provisions of the FMP amendment directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as the optimum yield (OY) for each fishery.

This provision of the FMP is implemented under § 652.21, which requires the Director of the Northeast Region, National Marine Fisheries Service (Regional Director), prior to recommending quotas, to consider the following information: Stock assessments; catch records and other relevant information concerning exploitable biomass and spawning biomass; fishing mortality rates; incoming recruitment; projected effort and catches; and areas likely to be reopened to fishing.

The Secretary published a notice of proposed quotas based on the Regional Director's recommendation on December 7, 1982 (47 FR 54985). The proposed quotas and their relationship to the established OY's for each fishery were as follows:

Fishery	Range identified as OY (in bushels)	Proposed quota for 1983 (in bushels)
Mid-Atlantic Surf Clam	1,800,000 to 2,900,000	2,350,000
New England Surf Clam	25,000 to 100,000	50,000
Ocean Quahog	4,000,000 to 6,000,000	4,000,000

Public comment was requested for a 30-day period. No comments were received concerning the proposed quotas for ocean quahogs and for mid-Atlantic surf clams. Comments on the proposed quota for the New England surf clam fishery were received from the New England Fishery Management Council, the Massachusetts Division of Marine Fisheries, and from a surf clam fisherman from New England. Two of the comments suggested that the quota for the New England fishery should be increased to the maximum allowable level of 100,000 bushels. Those commenters suggested that the New England fishery is developing, shows no signs of depleting the resource at present levels, and that operators planning to extend their range of fishing to develop previously unexploited beds that may exist on Georges Bank will need an expanded quota to conduct economically feasible exploratory fishing. The Massachusetts Division of Marine Fisheries took no position with respect to the actual amount of the quota, but did express concern that a quota greater than 50,000 bushels may offer further encouragement for vessels from the mid-Atlantic surf clam fishery to harvest surf clams in New England, in some cases resulting in illegal fishing activity in inshore waters.

The Regional Director finds no reason not to accommodate the commenters requesting a larger quota, since the quota value requested lies within the range identified as the OY for the fishery. Further, no information exists to suggest the resource would be harmed by fishing efforts to define and develop its full potential. The Regional Director does recognize that a larger quota will be more attractive to vessels from the mid-Atlantic fishery, but under the FMP any vessel is accorded access to the New England fishery. Vessels from the mid-Atlantic are at least as capable as any others to identify and develop the New England fishery, and, under the FMP, are afforded that opportunity. The Regional Director has therefore recommended that the New England surf clam quota be adjusted upwards to 100,000 bushels, and that no adjustments be made to the mid-Atlantic surf clam quota and the ocean quahog quota.

The Secretary, after consultation with the Council, issues the following quotas for 1983 based on the Regional Director's recommendations:

Fishery	1983 quota in bushels
Mid-Atlantic Surf Clam	2,350,000
New England Surf Clam	100,000
Ocean Quahog	4,000,000

Other Matters

This action is taken under the authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for the Surf Clam and Ocean Quahog Fisheries, under the Regulatory Flexibility Act, that the authorizing rules do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Reporting requirements.

(16 U.S.C. 1801 et seq.)

Dated: February 23, 1983.

Richard B. Roe,

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

[FR Doc. 83-5052 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 30223-29]

Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: NOAA issues this notice announcing restrictions to reduce the levels of commercial fishing for widow rockfish, the other *Sebastes* rockfish except Pacific ocean perch and shortbelly rockfishes (the *Sebastes* complex), and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these reductions.

These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because signs of biological stress to these stocks have been identified or are projected to occur

before the end of 1983. These actions are intended to reduce fishing rates and to avoid the necessity of a fishery closure before the end of the year.

DATE: Effective date: 0001 PST March 1, 1983. Comments will be accepted through March 15, 1983.

ADDRESSES: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 or Alan Ford, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150, or Alan Ford, 213–548–2575.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and final implementing regulations were published October 5, 1982 (47 FR 43964). The regulations allow the Secretary of Commerce (Secretary) to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species.

The Pacific Fishery Management Council (Council), at its November and January meetings, discussed evidence of biological stress for widow rockfish, at least one species of rockfish within the multi-species *Sebastes* complex, and sablefish. The Council designated a Task Group of representatives from its membership, its Groundfish Management Team (Team), the fishing industry and State fishery agencies to recommend methods to reduce fishing levels with minimal disruption to the fishing industry. The Council considered advice from its Team (State and Federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), Scientific and Statistical Committee (State, Federal, and university scientists), the concerned public, and the Task Group. The Council's recommendations and Secretarial actions on those recommendations are presented below.

The FMP differentiates between numerical and non-numerical optimum-yield (OY) species. Those species which may be harvested fairly selectively have a numerical OY, which is the maximum amount of that species which may be landed in a year; landings in excess of OY are prohibited. Widow rockfish and sablefish have numerical OYs. Species which are not harvested selectively, which often are harvested together, which are of very little commercial interest, or about which there is little scientific data, are part of the non-numerical OY group and are managed by gear, area, and catch restrictions. An estimate of the acceptable biological catch (ABC), the annual catch that could be taken without jeopardizing a resource's productivity, has been made for most species in this group. Some species in the non-numerical OY group may be fished above the ABC. However, when a species in the group is stressed, or will be before the end of the year, the Council must determine whether harvest of the group as a whole should be reduced even though some species in the group may not be stressed. The *Sebastes* complex (all *Sebastes* species managed under the FMP except Pacific ocean perch and shortbelly and widow rockfishes) is included in this non-numerical OY group.

WIDOW ROCKFISH

Council Recommendation: At its meeting on January 12–14, 1983, in Portland, Oregon, the Council endorsed the Task Group proposal which recommended that the Secretary impose coastwide a 30,000 pound trip limit for widow rockfish, subject to inseason adjustment so that the OY is not exceeded before the end of 1983.

Rationale: Signs of stress were documented for widow rockfish *(Sebastes entomelas)* in 1982 and a trip limit of 75,000 pounds (round weight) per vessel per fishing trip was imposed on October 13, 1982 (47 FR 46287). (Round weight is the weight of the whole fish.) The 1983 ABC and OY were reduced to 10,500 metric tons (mt), about half the 1982 levels. Subsequent review by the Team at the Council's meeting on November 17–18, 1982, revealed that the signs of stress identified in August 1982 were evident still and were expected to persist into 1983. The catch of widow rockfish for the 1983 calendar year was projected to exceed the best current estimate of ABC, 10,500 mt; previously fished grounds had become markedly less productive, causing effort to be turned toward new grounds (which, consequently, became less productive); and increasing proportions of juvenile fish (juvenescence) were caught in areas where effort had been high. The Team indicated that it is unlikely that any large unexploited concentrations of widow rockfish will be found off Washington, Oregon, and California in 1983. The Secretary concurred with the Council's recommendation that the 75,000 pound trip limit should be extended into 1983 until alternate management measures could be analyzed and adopted (48 FR 809, January 7, 1983).

Secretarial Action: The Secretary concurs with the finding of continuing stress and hereby replaces the 75,000 pound trip limit with a coastwide trip limit allowing no more than 30,000 pounds (round weight) of widow rockfish to be taken and retained, or landed, per vessel per fishing trip until the trip limit is modified, superseded, or rescinded. This trip limit may be modified inseason as outlined in the paragraphs below on inseason adjustments. Landings of widow rockfish in excess of OY are prohibited according to 50 CFR 663.21(b).

Impacts: This action will have its greatest impact on vessels which would have landed more than 30,000 pounds of widow rockfish per trip. In 1982, widow rockfish were landed predominantly by midwater trawlers targeting on this species. The average landings of widow rockfish in 1982 for this gear type was about 45,000 pounds coastwide. Although landings per trip will be reduced, this measure is the least economically harmful way to preserve a year-round fishery for widow rockish while providing biological protection for the species. The impact may be neutralized to some extent because landings in 1983 are expected to be much smaller than in 1982 due to depletion of the resource and a reduction in effort due to vessels leaving this fishery.

Sebastes Complex

Council Recommendation: The Council adopted the Task Group's recommendation for a coastwide trip limit of 40,000 pounds of the *Sebastes* complex per vessel per trip which could be adjusted in-season so that the annual catch in the Vancouver-Columbia area would be about half-way between the 1982 landings and the sum of the 1983 ABCs for the complex (preliminarily estimated at 13,500 mt). This goal is a compromise between no restriction and the severe restriction required to achieve the aggregate ABCs in 1983.

Rationale: The *Sebastes* complex includes all the *Sebastes* rockfish species in the non-numerical OY group, and thus excludes Pacific ocean perch, shortbelly and widow rockfishes, and *Sebastolobus* species. The *Sebastes* complex consists of yellowtail (*Sebastes flavidus*), canary (*S. pinniger*), chilipepper (*S. goodei*), black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), bocaccio (*S. paucispinis*), copper rockfish (*S. caurinus*) cowcod (*S. levis*), darkblotched rockfish (*S. crameri*), greenspotted rockfish (*S. chlorostictus*), olive rockfish (*S. serranoides*), redstripe rockfish (*S. proriger*), rougheye rockfish (*S. aleutianus*), sharpchin rockfish (*S.*

zacentrus), silvergrey rockfish (*S. brevispinis*), splitnose rockfish (*S. diploproa*), stripetail rockfish (*S. saxicola*), vermilion rockfish (*S. miniatus*), yellowmouth rockfish (*S. reedi*), and yelloweye rockfish (*S. ruberrimus*). Preliminary figures for 1982 indicate that coastwide landings for the complex exceeded the sum of the species ABCs. Yellowtail and canary rockfishes comprised 70 percent of the landings from the Vancouver-Columbia area in 1982, and their landings exceeded their summed ABCs by a factor of two.

Landings of yellowtail in the Columbia area have been twice the ABC the last five years. The exploitable biomass of yellowtail rockfish in the Vancouver-Columbia area is currently below a level expected to produce MSY. The Team documented biological stress for yellowtail rockfish and recommended lowering the 1983 ABC below MSY in those two areas with the intent of rebuilding stocks to MSY levels.

Landings of canary rockfish exceeded ABC in the Columbia area in four of the last five years, and were three times ABC in 1982. Catch per unit of effort for canary rockfish has declined in the Vancouver area since 1977. The Team feels earlier estimates of MSY and ABC were too high and recently set an interim ABC in the Vancouver area at 800 mt, the highest landing of record.

Landings of the other *Sebastes* complex species in the Columbia area in 1983 are projected to exceed the sum of the best current estimates of ABC, which means that some species will be harvested well above levels providing MSY.

The Council acknowledged the impossibility of managing these species individually, agreed that major components of the *Sebastes* complex were likely to be stressed in 1983 if current levels of fishing continued, and asked the Task Group to consider management regimes to reduce pressure on the *Sebastes* complex as a whole.

Secretarial Action: The Secretary concurs with the Council's determination of biological stress on the *Sebastes* complex and hereby announces a coastwide trip limit allowing no more than 40,000 pounds (round weight) of the *Sebastes* complex to be taken and retained, or landed per vessel per fishing trip unless modified, superseded, or rescinded. This trip limit may require modification in-season so that 1983 landings in the Vancouver-Columbia area do not exceed a level about half way between the 1982 landings and the 1983 aggregate ABC. (See the paragraphs below on in-season adjustments.)

Impacts: Vessels that traditionally have landed more than 40,000 pounds of the *Sebastes* complex per trip from the Vancouver or Columbia areas will be most restricted by this limit. In 1982, the *Sebastes* complex was landed predominantly by larger trawlers using roller gear and targeting on these species. Nevertheless, less than seven percent of the landings of the *Sebastes* complex, by all gear types, were greater than 40,000 pounds in the Vancouver-Columbia area in 1982. Accordingly, most gear types will not be affected significantly by this limit. Landings of this complex in the Eureka, Monterey, and Conception areas were below 40,000 pounds per trip in 1982. Consequently, the trip limit is not expected to inhibit operations in these three southern areas where no signs of stress are evident.

Sablefish

Council Recommendation: The Council adopted the Task Group recommendation for a minimum size limit of 22 inches (total length) for sablefish, applying it to fish taken north of Point Conception and setting a trip limit for incidentally caught sablefish smaller than 22 inches at 333 fish, 1,000 pounds, or 10 percent by weight of all sablefish retained, whichever is greatest, per vessel per trip. The recommended 22-inch size limit does not apply to Monterey Bay. The Council was uncertain of the applicability of this size limit to the fishery south of Point Conception because of reports that many sablefish landed in the Conception area have been smaller than 22 inches and there is no consensus as to whether this is a nursery area or whether the fish there mature at a smaller size. The sablefish fishery in the Conception area is not well developed; less than 600 mt were landed there in 1982. The Council will reconsider sablefish management for the area south of Point Conception at its March meeting. The separate OY of 2,500 mt for the Monterey Bay area is unchanged.

Rationale: In 1982, the OY for sablefish (*Anoplopoma fimbria*) was increased by 30 percent, from 13,400 mt to 17,400 mt, to forestall closing the fishery unnecessarily because stress was not evident or predicted at the then currrent fishing levels. When landings were projected to exceed the increased OY, the Secretary imposed a very restrictive trip limit (3,000 pounds round weight per vessel per trip) for the last two months of 1982, rather than prohibit all landings, because (1) the regulations had recently been implemented and the fishing industry had not been warned of an impending closure; (2) the Team was not able to document signs of biological stress resulting from landings above 13,400 mt and had no new data to evaluate landings near 17,400 mt; (3) targeting on sablefish would be curtailed; and (4) waste would be reduced by allowing incidentally caught sablefish to be landed rather than discarded. (*See*, 47 FR 49620 and 47 FR 56138.)

In its reevaluation of 1983 ABCs, the Team found no reason to change the ABC from its 1982 level of 13,400 mt because it was based on the best scientific data available. The Team acknowledged that data on sablefish are not complete, but also noted that if ABC were based on average landings over the past five years, ABC would be quite close to, but slightly below, 13,400 mt. The Team felt that continued fishing at the levels experienced in 1982 (above 17,400 mt) would produce a fishing mortality rate exceeding that required to take ABC in 1983, and likely would cause biological stress to the sablefish resource. Most of the increase in 1982 landings is attributed to small sablefish, less than 22 inches long (total length). Continued catches of immature sablefish (less than 25% are mature at 22 inches) could limit the reproductive potential of the stock by removing fish which never had spawned, eventually depleting the resource. The Council acknowledged that, if 1982 fishing patterns were repeated in 1983, OY would be exceeded before year's end, and the harvest would be dominated by young sablefish.

Secretarial Action: The Secretary accepts the Council's recommendations and hereby announces for sablefish taken and retained, or landed, in the area north of Point Conception (34°27′ N. latitude), excluding Monterey Bay (37°00′ to 36°30′ N. latitude), a minimum size limit of 22 inches (total length), except for a trip limit for sablefish smaller than 22 inches of 333 fish, 1,000 pounds (round weight), or 10 percent (round weight) of all sablefish retained, whichever is greatest, per vessel per fishing trip. Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without resort to mutilation of the fish or additional force. For sablefish which have been "headed," the minimum size limit will be 16 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact. No sablefish may be retained which is in such a condition that its length has been extended or cannot be determined by

the methods stated here. These provisions for sablefish will remain in effect until modified, superceded, or rescinded; they will be reviewed and adjusted as necessary when 95% of OY is reached (50 CFR 663.27(b)(3)). Landings of sablefish in excess of OY are prohibited according to 50 CFR 663.21(b).

Impacts: This action will restrict landings by vessels that land sablefish smaller than 22 inches. In 1982, these were predominantly trawlers, which, for the first time on record, contributed more than half the sablefish landed from waters off Washington, Oregon, and California. Most of the trawl-caught sablefish were smaller than 22 inches. Although many are taken incidentally in the deep-water Dover sole fishery and in shrimp trawls, some targeting also has occurred due to recently developed markets. The 22-inch size limit would reduce targeting on small sablefish, enabling more of the stock to spawn at least once, and should allow landings close to the 1983 OY. According to the FMP, maximum biological production and maximum economic production of sablefish occur at lengths of 24 and 28 inches, respectively. Consequently, this 22-inch size limit is more likely to achieve maximum production from the resource than unrestricted fishing on smaller fish. The Secretary believes that this size limit should confer the greatest overall benefit to the resource and the fishery, and would forestall both economic problems and the necessity to discard all sablefish regardless of size, that would result from complete closure of the fishery if OY were achieved much before year's end, as would be expected if the fishery is unrestrained.

Inseason adjustments: The Secretary agrees with the Council's recommendation that inseason adjustments should be established to enable annual goals to be met. Such inseason adjustments are authorized under § 663.22 of the implementing regulations.

For widow rockfish and sablefish, the 1983 goals are to prevent landings from exceeding the OYs. For the *Sebastes* complex in the Vancouver-Columbia area, the 1983 goal is for landings not to exceed a level half-way between the 1982 landings and the 1983 summed ABCs, preliminarily estimated at 13,500 mt.

After June 1, 1983, the Team will evaluate the best data available by that date and project landings for the first half of 1983. If the projected landings for widow rockfish, the *Sabastes* complex, or sablefish are within 10 percent of where they are expected to be on June 30, 1983, based on the 1982 fishing rates, no action will be taken. If the projected landings are not within 10 percent of the expected amount, the limit(s), including the trip limits for sablefish smaller than 22 inches, will be adjusted so that the annual goal(s) may be achieved. These mid-season adjustments will be implemented near July 1 or as soon as practicable thereafter. Other management actions may be imposed under the points-of-concern mechanism at any time of theyear in response to a finding of further biological stress.

Other Fisheries

These limits for sablefish, widow rockfish, and the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. For vessels delivering fish to foreign processors, the specified trip limits apply on a haul-by-haul basis. The limits are not applicable to foreign trawlers or joint venture processors operating in the Pacific whiting fishery because current foreign regulations are more restrictive than the limits announced in this notice. Sablefish and rockfish are taken incidentally in these operations.

Foreign trawlers operating in the directed fishery for Pacific whiting are limited by incidental catch levels of 0.173 percent sablefish and 0.738 percent rockfish (excluding Pacific ocean perch) based on a nation's allocation of whiting. In 1982, only 10,000 mt of whiting were allocated (with incidental catch limits of 17 mt of sablefish and 74 mt of rockfish, excluding Pacific ocean perch) and even less may be requested in 1983. If the foreign trawl fleet of any nation exceeds its incidental catch limit for any species, that foreign fishery will be terminated. Foreign incidental catches are not used in computation of OY and thus will not accelerate closure of the domestic fishery.

Joint venture processors are limited by incidental retention allowances of 0.173 percent sablefish and 0.738 percent rockfish (excluding Pacific ocean perch) based on the total allotment of whiting for joint venture processing (100,000 mt in 1983). In 1982, retention of sablefish and rockfish in the joint venture fisheries was far below allowed levels; about 23 sablefish and 1,000 pounds of rockfish (excluding Pacific ocean perch) were received per vessel per day by joint venture processors. Even in the worst possible case (if all the sablefish were smaller than 22 inches and all the rockfish were either widow rockfish or in the *Sebastes* complex), the 1982 catches were much lower than could be expected per vessel per day under trip limits of 333 small sablefish, 30,000 pounds of widows or 40,000 pounds of the *Sebastes* complex. Because U.S. fishermen are not paid for species that cannot be retained by the foreign processors, there is an economic incentive to avoid large amounts of incidentally-caught species. Joint-venture incidental catches to this point have not been used in computation of OY and thus will not accelerate closure of the shore-based domestic fishery.

Classification

The determination to impose these fishing restrictions are based on the most recent data available. The aggregate data upon which these determinations are based are available for public inspection at the Office of the Director, Northwest Region, during business hours until the end of the comment period.

These actions are taken under the authority of 50 CFR 663.23 and are taken in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations state that the Secretary will publish a notice of proposed regulatory action before taking such action unless he determines that such notice and public review are impracticable, unnecessary, or contrary to the public interest. Because of the immediate need to limit the harvest of widow rockfish, the *Sebastes* complex, and sablefish, and thereby reduce catch levels which could otherwise result in overharvest, further delay of these actions is impracticable and contrary to the public interest. Anticipated fishing rates at the high levels of those in 1982 will unquestionably result in several ABCs being exceeded. Prompt action to reduce those fishing rates is necessary to protect the resource and alleviate the necessity for otherwise inevitable year-end closures. Consequently, these actions are taken without prior notice in the **Federal Register** and are made effective four days after filing for public inspection with the Office of the Federal Register in order to provide fishermen sufficient time to complete fishing trips and off-load their catches. The public has had opportunity to comment on trip limits for widow rockfish at the August, September, November, and January Council meetings, and at an industry meeting in Newport, Oregon. The sablefish size limit and *Sebastes* trip limit were discussed at both the November and January Council meetings, and public comment was solicited at the January Council meeting. The public participated in the Task Group meetings in December and

January that generated most of the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

(15 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: February 23, 1983.

Richard B. Roe,

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

[FR Doc. 83-5013 Filed 2-24-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 40
Monday, February 28, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the months of March through September 1983 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as a pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The association claims that the action is needed to avoid inefficient handling of milk and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

DATE: Comments are due March 7, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It also has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures and the inclusion of March 1983 in the suspension period if this is found necessary. The initial request for the action was received on February 15, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing without the necessity of inefficient handling and transportation of milk.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Michigan marketing area is being considered for March through September 1983.

1. In § 1040.7(b)(2) the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and be direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), subdivisions (i) and (ii).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1983 in the suspension period.

The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal would make inoperative for the months of March through September 1983 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants.

The suspension was requested by Michigan Milk Producers Association which represents a majority of the producers supplying the market.

The association said that milk production is increasing while Class I sales are falling. It noted that January 1983 was the 45th consecutive month of increased milk production for the market and also the 27th consecutive month of declining Class I sales.

The association said that increased milk production has resulted from larger cow numbers and increased production per cow, and that lower fluid milk sales are attributable to the depressed economy in Michigan. The association anticipates that the imbalance between milk production and fluid milk sales will continue during the spring months and again in August and September with seasonal increases in production levels and the lowering of sales due to closing of schools. The cooperative said that the problem of pooling supply plants under these marketing conditions has been made particularly acute with the recent loss of sales of a major distributor in the market.

The association said that the suspension is needed to avoid the inefficient handling of milk merely to assure pooling of supply plants and to ensure that dairy farmers who have been historically associated with the Southern Michigan market will continue to share in the fluid milk sales of the market.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on February 23, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-5028 Filed 2-25-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

10 CFR Part 960

[Docket No. NE-RM-83-2]

Nuclear Waste Policy Act of 1982: Proposed General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories; Change of Date for Public Hearing, and Extension of Public Comment Period

AGENCY: Department of Energy.

ACTION: Notice of amended hearing schedule and public comment period.

SUMMARY: This notice amends an earlier notice (48 FR 6549, February 14, 1983) which announced a schedule for public hearings to receive oral comments on proposed general guidelines for the recommendation of sites for nuclear waste repositories. The revised schedule is set forth below; only the date of the hearing schedule for Seattle, Washington, has been changed.

The Notice of Proposed Rulemaking (NOPR) which set forth the proposed general guidelines was published on February 7, 1983 (48 FR 5670). That NOPR solicited written public comments on the proposed guidelines by March 24, 1983. As a consequence of the change in the date of the Seattle public hearing, the deadline for submission of written comments on the proposed guidelines has been extended until April 7, 1983.

DATES: Written comments must be received by 4:30 p.m. on April 7, 1983, to ensure their consideration. Public hearings are scheduled as follows:

1. March 4, 1983 9 a.m. (local time) to 8 p.m. Chicago, Illinois;
2. March 7, 1983, 9 a.m. to 8 p.m. New Orleans, Louisiana;
3. March 10, 1983, 9 a.m. to 5 p.m. Washington, D.C.;
4. March 14, 1983, 9 a.m. to 8 p.m. Salt Lake City, Utah; and
5. March 21, 1983, 9 a.m. to 8 p.m. Seattle, Washington.

Hearings at individual locations are scheduled for one day. At DOE's discretion, where warranted by public participation, hearing duration will be extended to a second day.

Request to make oral presentation at a hearing should be received no later than 4:30 p.m. e.s.t. on:

1. February 24, 1983, for the Chicago hearing;
2. March 1, 1983, for the New Orleans hearing;
3. March 3, 1983, for the Washington, D.C. hearing;
4. March 7, 1983, for the Salt Lake City hearing; and
5. March 14, 1983, for the Seattle hearing.

ADDRESSES: Written comments on the proposed siting guidelines should be sent to Robert L. Morgan, Project Director, Office of Civilian Radioactive Waste, U.S. Department of Energy, Washington, D.C. 20585. Public hearings will be held at the following locations:

1. March 4, 1983—The Hotel Continental (formerly the Radison Hotel) (Tally Ho Room, Ninth Floor), 505 North Michigan Avenue, Chicago, Illinois 60611;
2. March 7, 1983—Hyatt Regency (Poydras A and B Meeting Room), 500 Poydras Plaza, New Orleans, Louisiana 70140;
3. March 10, 1983—Department of Energy, Forrestal Building (Auditorium, Room GE-086), 1000 Independence Avenue, SW., Washington, D.C. 20585;
4. March 14, 1983—Salt Lake Hilton Hotel (3 Seasons Room), 150 West, 500 South, Salt Lake City, Utah 84101; and
5. March 21, 1983—New Federal Building (North and South Auditorium, fourth floor, Second Avenue level) 915 Second Avenue, Seattle, Washington 98174.

Request to make an oral presentation at a hearing should be addressed to: Department of Energy, Office of Hearing and Dockets, CE-65, Mail Stop 6B-025, Room 5F-078, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention NE-RM-83-2, telephone (202) 252-9319. A person making a request should provide a phone number at which he or she may be contacted through the day of the hearing.

FOR FURTHER INFORMATION CONTACT:

Critz H. George, Division of Waste Repository Deployment, Office of Terminal Waste Disposal and Remedial Action, U.S. Department of Energy, Washington, D.C. 20545, telephone (301) 353-3014; or

Robert Mussler, Esquire, Deputy Assistant General Counsel for Environment, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Only the date for submitting written comments and the date of the Seattle public hearing are affected by this notice. Procedures for conducting the public hearing remain as specified in the February 14, 1983 **Federal Register** notice (48 FR 6549).

Issued at Washington, D.C., February 24, 1983.

Donald Paul Hodel,

Secretary of Energy.

[FR Doc. 83-5135 Filed 2-25-83; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-CE-6-AD]

Airworthiness Directives; Short Brothers SC7 Skyvan Series 3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Short Brothers SC7 Skyvan Series 3 airplanes which would require inspections and reinforcement/repair or replacement of certain flap structure and attachment components. The manufacturer has received a report of an outer hinge arm on an inboard flap failing in service. The proposed AD is needed to prevent structural failure of the flaps which could result in loss of control of the airplane.

DATE: Comments must be received on or before April 2, 1983.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Short Brothers Service Bulletin (S/B) No. 51-51, Rev. 1, dated October 19, 1978; S/B No. 57-A61, Rev. 5, dated October 28, 980; S/B No. 57-62, Rev. 1, dated September 9, 1980, applicable to this AD may be obtained from Shorts Aircraft, Suite 510, 1725 Jefferson Davis Highway, Arlington, Virginia 22202, or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 83-CE-6-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Mr. Al O. Astorga, Manager, Aircraft Certification Staff, AEU-100, Europe,

Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; or Mr. Paul Cormaci, Manager, Foreign FAR 23 Section, Central Region, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-CE-6-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: The manufacturer has received a report of an outer hinge arm on an inboard flap of a Short Brothers SC7 Skyvan Series 3 airplane failing in service. Metallurgical analysis of these failed parts indicates the presence of fatigue cracks which may have contributed to the failure. This report is the only such instance known to the FAA and the manufacturer. Such a failure may result in jamming or failure of the flap and a loss of control of the aircraft. As a result, Short Brothers Limited issued S/B 57-A61, which contains instructions for inspecting and, if necessary, replacing the outboard hinge arm and reinforcing certain flap structure. The United Kingdom Civil Aviation Authority, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, has classified this Service Bulletin, as revised, as well as S/B No. 51-51, Rev. 1, dated October 19, 1978, and S/B No. 57-62, Rev. 1, dated September 9, 1980, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the United Kingdom Civil Aviation Authority combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Short Brothers S/B No. 51-51, Rev. 1, dated October 19, 1978, S/B No. 57-A61, Rev. 5, dated October 28, 1980, and S/B No. 57-62, Rev. 1, dated September 9, 1980, and the mandatory classification of these Service Bulletins by the United Kingdom Civil Aviation Authority. Based on the foregoing, the FAA believes that the condition addressed by these Service Bulletins is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require the inspections and repairs required by the referenced Service Bulletins on all Short Brothers SC7 Skyvan Series 3 airplanes. There are approximately 11 aircraft affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $110,935 to the private sector, and few small entities will be effected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Short Brothers: Applies to SC7 Skyvan Series 3 airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the flaps, accomplish the following:

(a) For all affected aircraft except SNs SH1845 and SH1883, within the next 50 flights after the effective date of this AD or upon accumulating 7,000 flights, whichever occurs later, and thereafter at each subsequent 7,000 flights:

(1) Inspect the inboard flap outer hinge arm and operating arm attachment ribs and replace the outer hinge arm in accordance with Part 1 of the Accomplishment Instructions Section of Short Brothers Service Bulletin No. 57-A61, Revision 5, dated October 28, 1980, or an FAA approved equivalent.

(b) Within the next 250 flights after the effective date of this AD or upon accumulating 7,000 flights, whichever occurs later:

(1) Modify the outboard flap attachment ribs at the inboard hinge arm and operating arm in accordance with Part 1 of the Accomplishment Instructions Section of Short Brothers Service Bulletin No. 57-62, Revision 1, dated September 9, 1980, or an FAA approved equivalent.

(c) For S/Ns SH 1845 and SH 1883 only:

(1) Accomplish the initial inspection and outer hinge arm replacement described in paragraph (a)(1) of this AD within the next 250 flights after the effective date of this AD.

(2) Accomplish the modification described in paragraph (b)(1) of this AD within the next 250 flights after the effective date of this AD.

(d) For all affected aircraft, including S/Ns SH 1845 and SH 1883, replace the outboard flap inner hinge arm, P/N SC7-25-39, operating arm, P/N SC7-25-107/8, inboard flap inner hinge arm, P/N SC7-25-39, operating arm P/N SC7-25-109/110, and their associated attachment ribs at 20,000 flights or 18,000 flights, as defined by Short Brothers Life Extension Service Bulletin No. 51-51, Revision 1, dated October 19, 1978, in accordance with Short Brothers Service Bulletin No. 57-A61, Revision 5, dated October 28, 1980, or an FAA approved equivalent.

(e) For purposes of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of flights may be determined by multiplying each airplane's hours time-in-service by 2.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Note.—For reasons discussed earlier in the preamble: the FAA has determined that this document: (1) involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) certifies under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "Addresses."

Issued in Kansas City, Missouri, on February 16, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-4877 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 21222-257]

Foreign-Trade Zones in the United States

Correction

In FR Doc. 83-4275 beginning on page 7188 in the issue of Friday, February 18, 1983, make the following corrections:

1. On page 7188, the third column, the second paragraph under **SUMMARY,** the tenth line, the word "sumplified" should read "simplified".

2. On page 7190, the first column, the sixth line under **COMMENTS,** the word "ans" should read "and".

3. On page 7191, in § 400.101(a), the second column, the first line, the word "improper" should read "importer".

4. In the same column, in § 400.102(a), the second line, the word "Zone" should read "Zones".

5. On the same page, the third column, in § 400.106(a), the last two lines should read "to operate and the responsibility to maintain it."

6. On page 7192, the first column, in § 400.200(c), the third line should read "users, subject to public utility".

7. On page 7194, the first column, in § 400.601(e)(4)(iii), the word "indentification" should read "identification".

8. In the same column, the seventeenth line of § 400.601(e)(4) is designated "(vi)". It should be designated "(iv)".

9. On page 7196, the first column, in § 400.804(b), in the tenth and eleventh lines, the phrase "Foreign Trade Zone Act" should read "Foreign-Trade Zones Act".

10. In the same column, in § 400.805, the sixth line, place the word "the" before "Commissioner".

11. On the same page, in the middle column, in § 400.807(a), the next to last line, the word "land" should read "and".

12. On page 7197, the middle column, in § 400.1003(a), the third line, the word "opertor(s)" should read "operator(s)".

13. On the same page, the third column, in § 400.1003(f), the third line, the word "comparted" should read "compared".

14. In the same column, in § 400.1200, the first line, the word "violaltion" should read "violation".

15. On page 7199, the third column, in § 400.1309(c), the fifth line, the word "sensitives" should read "sensitive".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-19512, File No. S7-950]

Exemption for Options on Government Securities Traded Otherwise Than on a National Securities Exchange

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for proposed rulemaking.

SUMMARY: The Commission is extending the comment period for a proposed rulemaking under the Securities Exchange Act of 1934 that would designate as "exempted securities" options on government securities where such options are traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association. The Commission is extending the comment period to seek additional information regarding the market for these options and to provide the public with a more ample opportunity to offer its views on the proposed rule.

DATE: Comments should be submitted on or before April 14, 1983.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No. S7-950. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kevin Fogarty, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2416.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 19162 (October 20, 1982), 47 FR 49409 (November 1, 1982), the Commission proposed for comment Rule 3a12-7 (17 CFR 240.3a12-7) under the Securities Exchange Act of 1934 (the "Act") that would designate as "exempted securities," for purposes of the Act, certain securities derivative from government securities and traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association ("OTC government options"). The Commission received four comment letters, three of which arrived after December 1, 1982, the last day of the comment period.[1] The Federal Home Loan Mortgage Corporation expressed support for the proposed rule noting that "the Mortgage Corporation's ability to act effectively as an intermediary between the mortgage and capital markets is dependent in part on its ability to participate in over-the-counter optional delivery contracts both for the purchase of mortgages and the sale of securities, including Mortgage Participation Certificates * * *" The staff of the Board of Governors of the Federal Reserve System also endorsed the proposed rulemaking.

Two industry commentators, however, opposed adoption of the rule. The Securities Industry Association ("SIA") argued that interest in options on government securities extends beyond institutions to public investors and that consequently there is a strong need for regulation of this market. Both the SIA and Donaldson, Lufkin & Jenrette noted that Commission rules, such as those governing financial stability, selling practices and recordkeeping, would ensure that brokers were sufficiently responsible to honor commitments arising from selling these options. These commentators also pointed to past problems experienced with defaults on standby and forward commitments in the market for Government National Mortgage Association securities.

In light of the concerns raised by these commentators, the Commission has determined to extend the comment period for an additional 45 days. The Commission is interested in receiving information from the public regarding the possibility of abuses arising from trading in OTC government options based on current conditions, or on foreseeable changes in the character of the market should the proposed rule be adopted.[2] The Commission specifically

[1] *See* letter to George A. Fitzsimmons, Secretary, SEC, from Frank M. Wilkinson, Managing Director, Fixed Income Division, Donaldson, Lufkin & Jenrette, dated November 24, 1982; letter to George A. Fitzsimmons from Maud Mater, General Counsel, Federal Home Loan Mortgage Corporation, dated December 3, 1982; letter to George A. Fitzsimmons from Howard Brenner, Chairman, Options/Derivative Products Committee, Securities Industry Association, dated December 16, 1982; letter to George A. Fitzsimmons from William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, dated January 19, 1983. File No. S7-950.

[2] It should be noted that under the proposed rule OTC government options would remain subject to any applicable registration or other provisions of the Securities Act of 1933.

invites comments in the following areas: (1) Whether there currently exists any significant market in OTC government options and, if so, whether there is any significant public investor participation in that market, (2) whether an OTC government options market is likely to develop as a byproduct of increased activities in exchange-traded government options, (3) whether any exemption should be limited to entities such as the Federal Home Loan Mortgage Corporation which is subject to governmental oversight and firms which are reporting dealers to the Federal Reserve Bank of New York, (4) what would be the costs associated with requiring all unregistered firms that transact a business in OTC government options to register with the Commission or to conduct that business out of a registered entity.

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written comments should submit three copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than April 14, 1983. Reference should be made to File No. S7-950. All submissions will be made available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Dated: February 18, 1983.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4936 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-257-82]

Substantiation of Meal Expenses While Traveling

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations which would give the Commissioner authority to establish an optional method of computing meal expenses while traveling. Under the optional method a taxpayer would be relieved of substantiating the actual amount of the meal expenses.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 25, 1983. The amendments are proposed to be effective for expenses paid or incurred after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-257-82), Washington, D.C. 20224.

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

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

Section 274(d) of the Internal Revenue Code of 1954 was added by section 4(a)(1) of Revenue Act of 1962 (76 Stat. 974) to require taxpayers to substantiate certain entertainment and travel expenses. The last sentence of section 274(d) gives the Secretary authority to waive, by regulations, some or all of the substantiation requirements of section 274(d). Paragraph (b)(2) of § 1.274-5 of the Income Tax Regulations (26 CFR Part 1) requires a taxpayer to substantiate the amount of each separate travel expense and the time, place and business purpose of the travel.

This document proposes to amend the regulations under § 1.274-5 to give the Commissioner authority to establish a method under which a taxpayer may elect to use a specified amount or amounts for meals while traveling in lieu of substantiating the actual cost of meals. The purpose of the proposed regulation is to reduce the record-keeping burden on taxpayers where relatively small amounts are involved.

The taxpayer would not be relieved of substantiating the actual cost of other travel expenses as well as the time, place and business purpose of the travel. It is anticipated that the Commissioner will issue a revenue procedure with respect to this matter when the proposed regulations are finalized.

These amendments are to be issued under the authority contained in sections 274(d) and 7805 of the Internal Revenue Code of 1954 (76 Stat. 975, 26 U.S.C. 274(d); 68A Stat. 917, 26 U.S.C. 7805).

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this proposed regulation as it will not have a significant economic impact on a substantial number of small entities. The regulations would tend to reduce the recordkeeping duties of taxpayers rather than increase them.

Drafting Information

The principal author of these proposed regulations is David R. Haglund of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Section 1.274-5 is revised by adding a sentence to the end of paragraphs (f) and (g)(1), by revising paragraph (h), and by adding a new paragraph (i) immediately after paragraph (h), to read as follows:

§ 1.274-5 Substantiation requirements.

* * * * *

(f) *Substantiation by reimbursement arrangements or per diem, mileage, and other traveling allowances.* * * * See paragraph (h) of this section relating to the substantiation of meal expenses while traveling.

(g) *Reporting and substantiation of certain reimbursements of persons other than employees*—(1) *In general.* * * * See paragraph (h) of this section relating to the substantiation of meal expenses while traveling.

* * * * *

(h) *Authority for an optional method of computing meal expenses while traveling.* The Commissioner may establish a method under which a taxpayer may elect to use a specified amount or amounts for meals while traveling in lieu of substantiating the actual cost of meals. The taxpayer would not be relieved of substantiating the actual cost of other travel expenses as well as the time, place, and business

purpose of the travel. See paragraph (b)(2) and (c) of this section.

(i) *Effective date*—(1) *In general.* Section 274(d) and this section apply with respect to taxable years ending after December 31, 1962, but only with respect to period after that date.

(2) *Certain meal expenses.* Paragraph (h) of this section is effective for expenses paid or incurred after December 31, 1982.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-4874 Filed 2-23-83; 9:32 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[EE-3-81]

Affiliated Service Groups; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations prescribing rules for determining whether two or more separate service organizations constitute an affiliated service group, and detailing how certain requirements are satisfied by a qualified retirement plan maintained by a member of an affiliated service group. Changes to the applicable tax law were made by the Miscellaneous Revenue Act of 1980. The regulations would provide the public with additional guidance needed to comply with that Act and would affect all employers that maintain qualified retirement plans and that are members of an affiliated service group.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 29, 1983. For plans that were not in existence on November 30, 1980, the amendments is proposed to be effective for plan years ending after that date. For plans in existence on November 30, 1980, the amendments is proposed to be effective for plan years beginning after that date.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-3-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Patricia K. Keesler of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202/566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 414(m) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 201 of the Miscellaneous Revenue Act of 1980 (94 Stat. 3526) and section 5 of Pub. L. 96-613 (94 Stat. 3580). These regulations do not reflect amendments made to section 414(m) under the Tax Equity and Fiscal Responsibility Act of 1982. These regulations are to be issued under the authority contained in section 414(m) and in section 7805 of the Internal Revenue Code of 1954 (94 Stat. 3526, 94 Stat. 3580, 68A Stat. 917; 26 U.S.C. 414(m), 7805).

Statutory Provisions

Section 414(m)(1) of the Code provides that, for purposes of certain employee benefit requirements listed in section 414(m)(4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

Section 414(m)(2) defines an affiliated service group as a First Service Organization and one or more of the following: (A) Any service organization (A Organization) that is a shareholder or partner in the First Service Organization and that regularly performs services for the First Service Organization or is regularly associated with the First Service Organization in performing services for third persons; and (B) any other organization (B Organization) if a significant portion of the business of that organization is the performance of services for the First Service Organization, for A Organizations, or both, of a type historically performed by employees in the service field of the First Service Organization or the A Organizations, and ten percent or more of the interests in the organization is held by persons who are officers, highly compensated employees, or owners of the First Service Organization or of the A Organizations.

Section 414(m)(3) defines a service organization as an organization the principal business of which is the performance of services.

Section 414(m)(5)(A) provides that the term "organization" means a corporation, partnership, or other organization. Section 414(m)(5)(B) provides that principles of section 267(c) apply in determining ownership.

Section 414(m)(6) provides that the Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to prevent the avoidance of the employee benefit requirements listed in section 414(m)(4) through the use of separate service organizations.

Prior Guidelines

Initial guidelines under section 414(m) were set forth in Revenue Ruling 81-105, 1981-1 C.B. 256. Rev. Rul. 81-105 provided illustrations of how the provisions of section 414(m) operate by way of three examples. The rules set forth in Rev. Rul. 81-105 remain operative and are not affected by the promulgation of these proposed regulations.

Revenue Procedure 81-12, 1981-1 C.B. 652, prescribes procedures for (1) obtaining a ruling on whether two or more organizations are members of an affiliated service group, and (2) obtaining determination letters on the qualification, under section 401(a) or 403(a), of an employee's pension, profit-sharing, stock bonus, annuity, or bond purchase plan established by a member or of an affiliated service group.

Administrative Exemptions

Several parties have expressed concern that aggregation may be required under the rules of section 414(m)(2)(A) and (B) in situations where there has been no attempt to avoid the employee benefit requirements listed in section 414(m)(4).

Those parties noted that an organization qualifies as an A Organization whenever it is a shareholder or partner in the First Service Organization and regularly performs services for the First Service Organization or is regularly associated with the First Service Organization in performing services for third persons. Thus, aggregation will be required regardless of how small the interest is that the A organization holds in the First Service Organization, irrespective of whether the services performed by the A Organization are of a type historically performed by employees in the service field of the First Service Organization, and even if the services performed for the First Service Organization only constitute an insignificant portion of the business of the A Organization.

However, section 414(m)(1) grants authority to promulgate regulations that specify when all the employees of an affiliated service group will not be treated as employed by a single employer. Accordingly, proposed Treasury Regulation § 1.414 (m)-1(c) provides that a corporation, other than a professional service corporation, will not be treated as a First Service Organization for purposes of section

414(m)(2)(A). Professional service corporations are not excepted from treatment as First Service Organizations for purposes of section 414(m)(2)(A) because the legislative history indicates that such corporations were intended to be covered. A special definition of professional service corporations is provided in the proposed regulation.

A corporation will still be treated as a First Service Organization for purposes of section 414(m)(2)(B). Thus, two corporations, neither of which is a professional service organization, will be aggregated only if one of the corporations satisfies the more stringent tests to be classified as a B Organization.

However, the Commissioner may determine that, in practice, the exception in the A Organization test for corporations, other than professional service corporations, results in an avoidance of the requirements of section 414(m) that circumvents Congressional intent. If such avoidance is found in a significant number of cases, this exception may be removed from the regulations.

Similarly, several parties have mentioned that aggregation may be required under section 414(m)(2)(B) whenever the owner of the potential B Organization acquires an interest in the First Service Organization (or in an A Organization), even though this interest is minimal and even though the owner does not have any other significant connection with the First Service Organization (*i.e.*, the owner is not an officer or highly compensated employee of the First Service Organization).

Pursuant to the authority contained in section 414(m)(1), a special rule is provided for determining whether ten percent or more of the interests in the potential B Organization is held by officers, highly compensated employees, or owners of the First Service Organization (or of an A Organization). For this purpose, the interests held by persons who are owners of the First Service Organization and the B Organization (but who are not also officers or highly compensated employees of the First Service Organization), will be taken into account as owners of the First Service Organization only if they hold, in the aggregate, three percent or more of the interests in such First Service Organization.

There may be other situations, not covered by the special rules of the regulations, where aggregation should not be required although the organizations are described in the literal language of either section 414(m)(2)(A) or (B). Comments are solicited from the public as to what these rules should be.

Significant Portion

Proposed Treasury Regulation § 1.414(m)–2(c)(2) provides that the determination of whether providing services for the First Service Organization, for one or more A Organizations determined with respect to the First Service Organization, or for both, is a significant portion of the business of the potential B Organization will generally be based on the facts and circumstances. However, two specific rules are provided.

A safe harbor rule is provided under which the performance of services for the First Service Organization, for one or more A Organizations, or for both, will not be considered a significant portion of the business of a potential B Organization if the Service Receipts Percentage is less than five percent. The Service Receipts Percentage is the ratio of the gross receipts of the organization derived from performing services for the First Service Organization, for one or more A Organizations, or for both, to the total gross receipts of the organization derived from performing services. This ratio is the greater of the ratio for the year for which the determination is being made or for the three year period including that year and the two preceding years (or the period of existence of the organization, if less).

Except for a situation described in the preceding paragraph, the performance of services for the First Service Organization, for one or more A Organizations, or for both, will be considered a significant portion of the business of the potential B Organization if the Total Receipts Percentage is ten percent or more. The Total Receipts Percentage is calculated in the same manner as the Service Receipts Percentage, except that gross receipts in the denominator are determined without regard to whether they were derived from performing services.

Comments from the public are requested regarding these significant portion tests.

Historically Performed

Proposed Treasury Regulation § 1.414(m)–2(c)(3) provides that services will be considered of a type historically performed by employees in a particular service field if it was not unusual for the services to be performed by employees of organizations in that service field in the United States on December 13, 1980 (the date of enactment of section 414 (m)).

Constructive Ownership

Proposed Treasury Regulation § 1.414(m)–2(d)(2) provides that in determining ownership for purposes of section 414(m), an individual's interest under a plan that qualifies under section 401(a) will be taken into account. Comments from the public are requested concerning appropriateness of this rule in cases in which the investment in employer securities by the plan results from an independent decision of the plan trustee.

Organization

Proposed Treasury Regulation § 1.414(m)–2(e) provides that the term "organization" includes a sole proprietorship. The proposed regulations do not consider the impact of sections 414(b) (controlled group of corporations) or 414(c) (group of trades or businesses under common control) on the definition of "organization" in § 1.414(m)–2(e)(1). Specifically, the regulations do not consider the situation in which a particular organization is potentially part of both an affiliated service group and either a controlled group of corporations or a group of trades or businesses under common control. In such a situation, issues arise as to the order in which the determinations are made as to what constitutes a single employer. For example, whereas an individual corporation may be a service organization, the controlled group of which that corporation is a part may not be a service organization (or vice versa). Comments from the public are requested regarding the treatment of a controlled group of corporations or a group of trades or businesses under common control in this respect.

Service Organization

Proposed Treasury Regulation § 1.414(m)–2(f) provides that the principal business of an organization will be considered the performance of services if capital is not a material income-producing factor for the organization. The test for determining whether or not capital is a material income-producing factor is similar to the test in Treasury Regulation § 1.1348–3(a)(3)(ii), as in effect on February 28, 1983.

Numerous fields are listed in proposed Treasury regulation § 1.414(m)–2(f) as being service fields. Organizations engaged in a field not listed therein and in which capital is a material income-producing factor will not be considered to be service organizations until the first day of the first plan year beginning at least 180 days after the date of the publication of an official document

(such as a revenue ruling) giving notice to the contrary. The Commissioner of Internal Revenue is granted authority to determine that certain organizations, or types of organizations, should not be considered as being subject to the requirements of section 414(m) even though the organizations are engaged in a field listed in the proposed regulation. Comments are requested from the public as to examples of organizations that should or should not be considered as being service organizations subject to the provisions of section 414(m).

Multiple Affiliated Service Groups

Proposed Treasury Regulation § 1.414(m)–2(g) provides rules for multiple affiliated service groups. Two or more affiliated service groups will not be aggregated simply because an organization is an A Organization or a B Organization with respect to each affiliated service group. However, if an organization is a First Service Organization with respect to two or more A Organizations or two or more B Organizations, or both, all of the organizations will be considered to constitute a single affiliated service group.

Special Qualification Requirements

Pursuant to the authority granted in section 414(m)(6), proposed Treasury Regulation § 1.414(m)–3(b) provides that if a plan maintained by a member of an affiliated service group covers an employee described in section 401(c)(1) (self-employed individual), an owner-employee (as described in section 401(c)(3)), or a shareholder-employee (as described in section 1379 (d)) the plan must also satisfy the special requirements relating to plans that cover those types of employees, to the extent those requirements apply, even though that indidvidual is not employed by the member maintaining the plan. This provision only applies if such an employee's earned income or compensation received as a shareholder-employee is taken into account in computing contributions or benefits under the plan.

Multiple Employer Plans

Proposed Treasury Regulation § 1.414(m)–3(c) provides that if a plan maintained by a member of an affiliated service group covers an individual who is not an employee of that member, but who is an employee of another member of that affiliated service group, the plan will be considered to be maintained by more than one employer for purposes of several provisions of section 413(c) (relating to plans maintained by more than one employer). This rule allows a member of the affiliated service group to deduct contributions on behalf of individuals who are not employed by that member.

However, this multiple employer plan rule does not apply in the case of a controlled group of corporations (as described in section 414 (b)) or a group of trades or businesses under common control (as described in section 414 (c)). Those situations will be governed by the special rules of section 414 (b) or (c), respectively.

Discrimination

Proposed Treasury Regulation § 1.414(m)–3(d) provides that in testing for discrimination under section 401(a)(4) (requiring that contributions or benefits do not discriminate in favor of employees who are officers, shareholders, or highly compensated), all of the compensation paid to an individual must be considered in determining the contributions or benefits on behalf of the individual under a plan maintained by a member of an affiliated service group without regard to the percentage of the organization employing the individual owned by the member maintaining the plan.

Effective Dates

In the case of a plan that was not in existence on November 30, 1980, section 414(m) applies to plan years ending after that date. In the case of a plan that was in existence on November 30, 1980, section 414(m) applies to plan years beginning after that date.

Proposed Treasury Regulation § 1.414(m)–4(b)(1) provides that a defined contribution plan in existence on November 30, 1980 that fails to satisfy the requirements for qualification under section 401(a) solely because of the application of section 414(m) will be treated as continuing to satisfy the requirements of section 401(a) after the effective date of section 414(m) if the plan is terminated and all amounts are distributed to participants within 180 days after the latest of:

(i) [the date of the publication of this regulation in the **Federal Register** as a Treasury decision]

(ii) The date on which notice of the final determination with respect to a request for a determination letter is issued by the Internal Revenue Service, such request is withdrawn, or such request is finally disposed of by the Internal Revenue Service, provided the request for a determination letter was pending on [the date of the publication of this regulation in the **Federal Register** as a Treasury decision] or, in the case of a request for a determination letter on the plan termination, was made within 60 days after [the date of the publication of this regulation in the **Federal Register** as a Treasury decision], or

(iii) If a petition is timely filed with the United States Tax Court for a declaratory judgment under section 7476 with respect to the final determination (or the failure of the Internal Revenue Service to make a final determination) in response to such request, the date on which the decision of the United States Tax Court in such proceeding becomes final.

Proposed Treasury Regulation § 1.414(m)–4(b)(2) provides that a defined benefit plan in existence on November 30, 1980 that fails to satisfy the requirements for qualification under section 401(a) solely because of the application of section 414(m) will be treated as continuing to satisfy the requirements of section 401(a) after the effective date of section 414(m) if the plan is terminated and all amounts are distributed within the same period as that provided for defined contribution plans. However, deductions for contributions to the plan for plan years after the effective date of section 414(m) are limited to those necessary to satisfy the minimum funding standards of section 412.

Reliance on Proposed Regulations

Pending the adoption of final regulations, taxpayers may rely on the rules contained in this notice of proposed rulemaking and the Internal Revenue Service will issue determination, opinion, and ruling letters based on these rules. If any provisions of the final regulations are less favorable to taxpayers than these proposed rules, those provisions only will be effective for periods after adoption of final regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner has determined that this proposed regulation is not a major regulation for purposes of

Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are Kirk F. Maldonado and Mary M. Levontin of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.105-11 [Amended]

Paragraph 1. Paragraph (f) of § 1.105-11 is amended by striking out "section 414 (b) and (c)" and inserting in lieu thereof "section 414 (b), (c), or (m)."

Par. 2. The following new sections are added at the appropriate place:

§ 1.414(m)-1 Affiliated service groups.

(a) *In general.* Section 414(m) provides rules that require, in some circumstances, employees of separate organizations to be treated as if they were employed by a single employer for purposes of certain employee benefit requirements. For other rules requiring aggregation of employees of different organizations, see section 414(b) (relating to controlled groups of corporations) and section 414(c) (relating to trades or businesses under common control). If aggregation is required under either of the preceding provisions and also under section 414(m), the requirements with respect to all of the applicable provisions must be satisfied.

(b) *Aggregation.* Except as provided in paragraph (c), all the employees of the members of an affiliated service group shall be treated as if they were employed by a single employer for purposes of the employee benefit requirements listed in § 1.414(m)-3.

(c) *Aggregation not required.* Pursuant to the authority contained in section 414(m)(1), a corporation, other than a professional service corporation, shall not be treated as a First Service Organization (see § 1.414(m)-2) for purposes of section 414(m)(a)(A). Also, a special rule is provided in § 1.414(m)-2(c)(4) for determining ownership under section 414(m)(2)(B). For purposes of this paragraph, a professional service corporation is a corporation that is organized under state law for the principal purpose of providing professional services and has at least one shareholder who is licensed or otherwise legally authorized to render the type of services for which the corporation is organized. "Professional services" means the services performed by certified or other public accountants, actuaries, architects, attorneys, chiropodists, chiropractors, medical doctors, dentists, professional engineers, optometrists, osteopaths, podiatrists, psychologists, and veterinarians. The Commissioner may expand the list of services in the preceding sentence. However, no such expansion will be effective with respect to any organization until the first day of the first plan year beginning at least 180 days after the publication of such change.

§ 1.414 (m)-2 Definitions.

(a) *Affiliated service group.* "Affiliated service group" means a group consisting of a service organization (First Service Organization) and

(1) One or more A Organizations described in paragraph (b), or

(2) One or more B Organizations described in paragraph (c), or

(3) One or more A Organizations described in paragraph (b) and one or more B Organizations described in paragraph (c).

(b) *A Organizations*—(1) *General rule.* A service organization is an A Organization if it:

(i) Is a partner or shareholder in the First Service Organization (regardless of the percentage interest it owns in the First Service Organization but determined with regard to the constructive ownership rules of paragraph (d)); and

(ii) Regularly performs services for the First Service Organization, or is regularly associated with the First Service Organization in performing services for third persons.

It is not necessary that any of the employees of the organization directly perform services for the First Service Organization; it is sufficient that the organization is regularly associated with the First Service Organization in performing services for third persons.

(2) *Regularly performs services for.* The determination of whether a service organization regularly performs services for the First Service Organization or is regularly associated with the First Service Organization in performing services for third persons shall be made on the basis of the facts and circumstances. One factor that is relevant in making this determination is the amount of the earned income that the organization derives from performing services for the First Service Organization, or from performing services for third persons in association with the First Service Organization.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). A Organization. (i) Attorney N is incorporated, and the corporation is a partner in a law firm. Attorney N and his corporation are regularly associated with the law firm in performing services for third persons.

(ii) Considering the law firm as a First Service Organization, the corporation is an A Organization because it is a partner in the law firm and it is regularly associated with the law firm in performing services for third persons. Accordingly, the corporation and the law firm constitute an affiliated service group.

Example (2). Corporation. (i) Corporation F is a service organization that is a shareholder in Corporation G, another service organization. F regularly provides services for G. Neither corporation is a professional service corporation within the meaning of subsection (1)(c).

(ii) Neither corporation may be considered a First Service Organization for purposes of this paragraph and, thus, aggregation will not be required by operation of the A Organization test. However, G or F may be treated as a First Service Organization and the other organization may be a B Organization under the rules of subsection (2)(c).

Example (3). Regularly associated with. (i) R, S & T is a law partnership with offices in numerous cities. The office in the city of D is incorporated, and the corporation is a partner in the law firm. All of the employees of the corporation work directly for the corporation, and none of them work directly for any of the other offices of the law firm.

(ii) Considering the law firm as a First Service Organization, the corporation is an A Organization because it is a partner in the First Service Organization and is regularly associated with the law firm in performing services for third persons. Accordingly, the corporation and the law firm constitute an affiliated service group.

(c) *B Organizations*—(1) *General rule.* An organization is a B Organization if:

(i) A significant portion of the business of the organization is the performance of services for the First Service Organization, for one or more A Organizations determined with respect to the First Service Organization, or for both,

(ii) Those services are of a type historically performed by employees in the service field of the First Service Organization or the A Organizations, and

(iii) Ten percent or more of the interests in the organization is held, in the aggregate, by persons who are designated group members (as defined in subparagraph (4)) of the First Service Organization or of the A Organizations, determined using the constructive ownership rules of paragraph (d).

(2) *Significant portion*—(i) *General rule.* Except as provided in paragraphs (c)(2) (ii) and (iii), the determination of whether providing services for the First Service Organization, for one or more A Organizations, or for both, is a significant portion of the business of an organization will be based on the facts and circumstances. Wherever it appears in this paragraph (c)(2), "one or more A organizations" means one or more A organizations determined with respect to the First Service Organization.

(ii) *Service Receipts safe harbor.* The performance of services for the First Service Organizations, for one or more A Organizations, or for both, will not be considered a significant portion of the business of an organization if the Service Receipts Percentage is less than five percent.

(iii) *Total Receipts threshold test.* The performance of services for the First Service Organization, for one or more A Organizations, or for both, will be considered a significant portion of the business of an organization if the Total Receipts Percentage is ten percent or more.

(iv) *Service Receipts Percentage.* The Service Receipts Percentage is the ratio of the gross receipts of the organization derived from performing services for the First Service Organization, for one or more A Organizations, or for both, to the total gross receipts of the organization derived from performing services. This ratio is the greater of the ratio for the year for which the determination is being made or for the three year period including that year and the two preceding years (or the period of the organization's existence, if less).

(v) *Total Receipts Percentage.* The Total Receipts Percentage is calculated in the same manner as the Service Receipts Percentage, except that gross receipts in the denominator are determined without regard to whether they were derived from performing services.

(3) *Historically performed.* Services will be considered of a type historically performed by employees in a particular service field if it was not unusual for the services to be performed by employees of organizations in that service field (in the United States) on December 13, 1980.

(4) *Designated group*—(i) *Definition.* "Designated group" members are the officers, the highly compensated employees, and the common owners of an organization (as defined in paragraph (c)(4)(ii)). However, even though a person is not a common owner, the interests the person holds in the potential B Organization will be taken into account if the person is an officer or a highly compensated employee of the First Service Organization or of an A Organization.

(ii) *Common owner.* A person who is an owner of a First Service Organization or of an A Organization is a common owner if at least three percent of the interests in the organization is, in the aggregate, held by persons who are owners of the potential B organization (determined using the constructive ownership rules of paragraph (d)).

(5) *Owner.* The term "owner" includes organizations that have an ownership interest described in paragraph (e).

(6) *Aggregation of ownership interests.* It is not necessary that a single designated group member of the First Service Organization or of an A Organization own ten percent or more of the interests, determined using the constructive ownership rules of paragraph (d), in the organization for the organization to be a B Organization. It is sufficient that the sum of the interests, determined using the constructive ownership rules of paragraph (d), held by all of the designated group members of the First Service Organization, and the designated group members of the A Organizations, is ten percent or more of the interests in the organizations.

(7) *Non-service organization.* An organization may be a B Organization even though it does not quality as a service organization under paragraph (f).

(8) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). B Organization. (i) R is a service organization that has 11 partners. Each partner of R owns one percent of the stock in Corporation D. The corporation provides services to the partnership of a type historically performed by employees in the service field of the partnership. A significant portion of the business of the corporation consists of providing services to the partnership.

(ii) Considering the partnership as a First Service Organization, the corporation is a B organization because a significant portion of the business of the corporation is the performance of services for the partnership of a type historically performed by employees in the service field of the partnership, and more than ten percent of the interests in the corporation is held, in the aggregate, by the designated group members (consisting of the 11 common owners of the partnership). Accordingly, the corporation and the partnership constitute an affiliated service group.

(iii) A similar result would be obtained if no more than 8 percent of the 11 percent ownership in Corporation D were held by highly compensated employees of R who were not owners of R (even though no one group of the three preceding groups held 10 percent or more of the stock of Corporation D).

Example (2). Other aggregation rules. (i) C, an individual, is a 60 percent partner in D, a service organization, and regularly performs services for D. C is also an 80 percent partner in F. A significant portion of the gross receipts of F are derived from providing services to D of a type historically performed by employees in the service field of D.

(ii) Viewing D as a First Service Organization, F is a B Organization because a significant portion of gross receipts of F are derived from performing services for D of a type historically performed by employees in that service field, and more than ten percent of the interests in F is held by the designated group member C (who is a common owner of D). Accordingly, D and F constitute an affiliated service group. Additionally, the employees of D and F are aggregated under the rules of section 414(c). Thus, any plan maintained by a member of the affiliated service group must satisfy the aggregation rules of sections 414(c) and 414(m).

Example (3). Common owner. (i) Corporation T is a service organization. The sole function of Corporation W is to provide services to Corporation T of a type historically performed by employees in the service field of Corporation T. Individual C owns all of the stock of Corporation W and two percent of the stock of Corporation T. C is not an officer or a highly compensated employee of Corporation T.

(ii) Considering Corporation T as a First Service Organization, Corporation W is not a B Organization because it is not 10 percent owned by designated group members. Because C owns less than 3 percent of Corporation T, C is not a common owner of T.

Example (4). B Organization. (i) Individual M owns one-third of an employee benefit consulting firm. M also owns one-third of an insurance agency. A significant portion of the business of the consulting firm consists of assisting the insurance agency in developing employee benefit packages for sale to third persons and providing services to the insurance company in connection with employee benefit programs sold to other

clients of the insurance agency. Additionally, the consulting firm frequently provides services to clients who have purchased insurance arrangements from the insurance company for the employee benefit plans they maintain. The insurance company frequently refers clients to the consulting firm to assist them in the design of their employee benefit plans. The percentage of the total gross receipts of the consulting firm that represent gross receipts from the performance of these services for the insurance agency is 20 percent.

(ii) Considering the insurance agency as a First Service Organization, the consulting firm is a B Organization because a significant portion of the business of the consulting firm (as determined under the Total Receipts Percentage Test) is the performance of services for the insurance agency of a type historically performed by employees in the service field of insurance, and more than 10 percent of the interests in the consulting firm is held by owners of the insurance agency. Thus, the insurance agency and the consulting firm constitute an affiliated service group.

Example (5). B Organization. (i) Attorney T is incorporated, and the corporation is a 6% shareholder in a law firm (which is also incorporated). All of the work of Corporation T is performed for the law firm.

(ii) Under the principles of section 267(c), T is deemed to own the shares of the law firm owned by T Corporation. Thus, T is a common owner of the law firm. Considering the law firm as a First Service Organization, Corporation T is a B Organization because a significant portion of the business of Corporation T consists of performing services for the law firm of a type historically performed by employees, and 100 percent of Corporation T is owned by a common owner of the law firm.

Example (6). Significant portion. (i) The income of Corporation X is derived from both performing services and other business activities. The amount of its receipts derived from performing services for, and its total receipts derived from, Corporation Z and the total for all other customers is set forth below:

	Origin of income	Corporation Z	All customers
Year 1	Services	$4	$100
	Total		120
Year 2	Services	9	150
	Total		180
Year 3	Services	42	200
	Total		240

(ii) In year 1 (the first year of existence of Corporation X), the Services Receipts Percentage for Corporation X (for its business with Corporation Z) is less than five percent ($4/$100, or 4%). Thus performing services for Corporation Z will not be considered a significant portion of the business of Corporation X.

(iii) In year 2, the Service Receipts Percentage is the greater of the ratio for that year ($9/$150, or 6%) or for years 1 and 2 combined ($13/$250, or 5.2%), which is six percent. The Total Receipts Percentage is the greater of the ratio for that year ($9/$180, or 5%) or for years 1 and 2 combined ($13/$300, or 4.3%), which if five percent. Because the Services Receipts Percentage is greater than five percent and the Total Receipts Percentage is less than ten percent, whether performing services for Corporation Z constitutes a significant portion of the business of Corporation X is determined by the facts and circumstances.

(iv) In year 3, the Services Receipts Percentage is the greater of the ratio for that year ($42/$200, or 21%) or for years 1, 2, and 3 combined ($55/$450, or 12.2%), which is 21 percent. The Total Receipts Percentage is the greater of the ratio for that year ($42/$240, or 17.5%) or for years 1, 2, and 3 combined ($55/$540, or 10.1%), which is 17.5 percent. Because the Total Receipts Percentage is greater than ten percent and the Services Receipts Percentage is not less than five percent, a significant portion of the business of Corporation X is considered to be the performance of services for Corporation Z.

(d) *Ownership*—(1) *Constructive ownership.* Except as otherwise provided in the regulations under section 414(m), the principles of section 267(c) (relating to constructive ownership of stock) shall apply in determining ownership for purposes of section 414(m). Accordingly, the rules of section 267(c) shall apply to partnership interests as well as to stock.

(2) *Qualified plans.* In determining ownership for purposes of section 414(m), an individual's interest under a plan that qualifies under section 401(a) will be taken into account.

(3) *Special rules.* For purposes of section 414(m):

(i) Stock or partnership interests owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(ii) An individual shall be considered as owning the stock or partnership interests owned, directly or indirectly, by or for his family;

(iii) An individual owning (otherwise than by the application of paragraph (d)(3)(ii)) any stock in a corporation or interest in a partnership shall be considered as owning the stock or partnership interests owned, directly or indirectly, by or for his partner;

(iv) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(v) Stock or partnership interests constructively owned by a person by reason of the application of paragraph (d)(3)(i) shall, for the purpose of applying paragraph (d)(3) (i), (ii), or (iii), be treated as actually owned by such person, but stock or partnership interests constructively owned by an individual by reason of the application of paragraph (d)(3) (ii) or (iii) shall not be treated as owned by him for the purpose of again applying either of such subdivisions in order to make another the constructive owner of such stock or partnership interests.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Constructive ownership. (i) Individual K is incorporated as K Corporation, and K Corporation is a partner in a management consulting firm K & F. K regularly performs services for the management consulting firm K & F. The secretarial services for the consulting firm are performed by Corporation M. A significant portion of the business of the secretarial corporation, M, consists of providing services to the consulting firm. All of the stock of the secretarial corporation, M, is owned by individual K.

(ii) Considering the consulting firm as a First Service Organization, Corporation K is an A Organization because it is a partner in the consulting firm and regularly performs services for the firm or is regularly associated with the firm in performing services for third persons.

(iii) Under the principles of section 267(c), individual K is deemed to own the partnership interest in the consulting firm that is held by K Corporation. Thus, K is considered to be an owner of the consulting firm.

(iv) Considering the consulting firm as a First Service Organization, the secretarial corporation is a B Organization because a significant portion of its business consists of performing services for the consulting firm or for Corporation K of a type historically performed by employees in the service field of management consulting, and at least ten percent of the interests in the secretarial corporation, M, is held by individual K, an owner of the consulting firm.

Example (2). Constructive ownership. (i) J is the office manager and highly compensated employee of an accounting partnership H & H. The secretarial services for the partnership are provided by Corporation W. J owns fifty percent of the stock of the secretarial corporation. A significant portion of the business of the secretarial corporation consists of providing services to the partnership.

(ii) Considering the partnership as a First Service Organization, the secretarial corporation is a B Organization because a significant portion of the business of the secretarial corporation is the performance of services for the partnership of a type historically performed by employees of accounting firms, and more than ten percent of the interests in the corporation is held by a highly compensated employee of the partnership.

(iii) Under the principles of section 267(c), the result would be the same for example, if the stock were held (instead of by J) by the spouse of J, the children of J, the parents or grandparents of J, a trust for the benefit of J's

children, or by a combination of such relatives.

Example (3). Qualified plan. (i) T is the chief executive officer of W Corporation, which is a consulting firm. T is also a participant in the W Corporation Profit-Sharing Plan, which qualifies under section 401(a). T's account balance in the plan is $150,000, and it consists of 25 percent of the stock of X Corporation. The sole function of X Corporation is to provide secretarial services to W Corporation.

(ii) Considering W Corporation as a First Service Organization, X Corporation is a B Organization because a significant portion of the business of X Corporation consists of providing secretarial services to W Corporation, secretarial services are of a type historically performed by employees in the field of consulting, and 25 percent of the stock of X Corporation is considered to be owned by T, a highly compensated employee of W Corporation, using the principles of section 267(c). Accordingly, W Corporation and X Corporation constitute an affiliated service group.

(e) *Organization*—(1) *General rule.* The term "organization" includes a sole proprietorship, partnership, corporation, or any other type of entity regardless of its ownership format.

(2) *Special rule.* [Reserved]

(f) *Service organization*—(1) *Non-capital intensive organizations.* The principal business of an organization will be considered the performance of services if capital is not a material income-producing factor for the organization, even though the organization is not engaged in a field listed in paragraph (f)(2). Whether capital is a material income-producing factor must be determined by reference to all the facts and circumstances of each case. In general, capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital in the business, as reflected, for example, by a substantial investment in inventories, plant, machinery, or other equipment. Additionally, capital is a material income-producing factor for banks and similar institutions. However, capital is not a material income-producing factor if the gross income of the business consists principally of fees, commissions, or other compensation for personal services performed by an individual.

(2) *Specific fields.* Regardless of whether paragraph (f)(1) applies, an organization engaged in any one or more of the following fields is a service organization:

(i) Health;
(ii) Law;
(iii) Engineering;
(iv) Architecture;
(v) Accounting;
(vi) Actuarial science;
(vii) Performing arts;
(viii) Consulting; and
(ix) Insurance.

Notwithstanding the preceding sentence, an organization will not be considered to be performing services merely because it is engaged in the manufacture or sale of equipment or supplies used in the above fields, or merely because it is engaged in performing research or publishing in the above fields. An organization will not be considered to be a service organization under this paragraph (f)(2) merely because an employee provides one of the enumerated services to the organization or to other employees of the organization unless the organization is also engaged in the performance of the same services for third parties.

(c) *Other organizations.* Organizations engaged in performing services and that are not described in paragraph (f) (1) or (2) shall not be considered to be service organizations. The Commissioner may expand the list of fields contained in paragraph (f)(2). However, no such expansion will be effective until the first day of the first plan year beginning at least 180 days after the publication of such change.

(4) *Exempted organizations.* The Commissioner may determine that certain organizations, or types of organizations, should not be considered as subject to the requirements of section 414(m), even though the organizations are described in paragraph (f) (1) or (2).

(g) *Multiple affiliated service groups*—(1) *Multiple First Service Organizations.* Two or more affiliated service groups will not be aggregated simply because an organization is an A Organization or a B Organization with respect to each affiliated service group.

(2) *Multiple A or B Organizations.* If an organization is a First Service Organization with respect to two or more A Organizations or two or more B Organizations, or both, all of the organizations shall be considered to constitute a single affiliated service group.

(3) The provisions of this paragraph may be illustrated by the following examples.

Example (1).— *Multiple First Service Organizations.* (i) Corporation P provides secretarial service to numerous dentists in a medical building, each of whom maintains his own separate unincorporated practice. Dentist T owns 20 percent of the secretarial corporation and accounts for 20 percent of its gross receipts. Dentist W owns 25 percent of the corporation and accounts for 25 percent of its gross receipts.

(ii) Considering Dentist T as a First Service Organization, the secretarial corporation, P, is a B Organization because 20 percent of the gross receipts of the corporation are derived from performing services for Dentist T of a type historically performed by employees of dentists, and 20 percent of the interests in the corporation is owned by Dentist T. Accordingly, Dentist T and the corporation constitute an affiliated service group.

(iii) Considering Dentist W as a First Service Organization, the secretarial corporation, P, is a B Organization, because 25 percent of the gross receipts of the corporation are derived from performing services for Dentist W of a type historically performed by employees of dentists, and 25 percent of the interests in the corporation is owned by Dentist W. Accordingly, Dentist W and the corporation constitute an affiliated service group. However, this affiliated service group does not include Dentist T even though the secretarial corporation, P, is a B Organization with respect to both dentists. Thus, there are two affiliated service groups.

Example (2).—Multiple B Organizations. (i) Doctor N is incorporated as Corporation N. Secretarial services are provided to Corporation N by Corporation Q. Corporation N owns 20 percent of the interests in the secretarial corporation and provides 20 percent of its gross receipts. Nursing services are provided to Corporation N by Corporation R. Corporation N owns 25 percent of the interests in the nursing corporation and provides 25 percent of its gross receipts.

(ii) Considering Corporation N as a First Service Organization, the secretarial corporation, Q, is a B Organization because 20 percent of the gross receipts of the secretarial corporation, Q, are derived from performing services for Corporation N of a type historically performed by employees of doctors, and 20 percent of the secretarial corporation is owned by the owner of Corporation N. Accordingly, Corporation N and the secretarial corporation, Q, constitute an affiliated service group.

(iii) Considering Corporation N as a First Service Organization, the nursing corporation, R, is a B Organization because 25 percent of the gross receipts of the nursing corporation, R, are derived from performing services for Corporation N of a type historically performed by employees of doctors, and 25 percent of the nursing corporation is owned by the owner of Corporation N. Accordingly, Corporation N and the nursing corporation constitute an affiliated service group.

(iv) For purposes of section 414(m), there will be considered to be one affiliated service group consisting of Corporation N, the secretarial corporation, Q, and the nursing corporation, R.

§ 1.414(m)-3 Employee benefit requirements.

(a) *Employee benefit requirements affected.* All of the employees of the members of an affiliated service group shall be treated as employed by a single employer for purposes of the following employee benefit requirements:

(1) Sections 401(a)(3) and 410 (relating to minimum participation requirements);
(2) Section 401(a)(4) (requiring that contributions or benefits do not discriminate in favor of employees who are officers, shareholders, or highly compensated);
(3) Sections 401(a)(7) and 411 (relating to minimum vesting standards);
(4) Sections 401(a)(16) and 415 (relating to limitations on contributions and benefits);
(5) Section 408(k) (relating to simplified employee pensions);
(6) Section 105(h) (relating to self-insured medical reimbursement plans);
(7) Section 125 (relating to cafeteria plans); and
(8) Pursuant to the authority granted in section 414(m)(6), section 401(a)(10) (relating to plans providing contributions or benefits to owner-employees).

(b) *Special requirements.* If a plan maintained by a member of an affiliated service group covers an employee described in section 401(c)(1) (self-employed individual), an owner-employee within the meaning of section 401(c)(3), or a shareholder-employee within the meaning of section 1379(d), the plan must also satisfy the following requirements to the extent they apply:
(1) Section 401(a)(9) (relating to special distribution requirements for plans benefiting self-employed individuals);
(2) Section 401(a)(10) (relating to special requirements for plans benefiting owner-employees);
(3) Section 401(a)(17) (relating to a limitation on the compensation base of plans benefiting self-employed individuals or shareholder-employees); and
(4) Section 401(a)(18) (relating to special requirements for defined benefit plans benefiting self-employed individuals or shareholder-employees).

Pursuant to the authority granted in section 414(m)(6), a plan that covers a self-employed individual, an owner-employee, or a shareholder-employee will be subject to the preceding requirements, even though that individual is not employed by the member of the affiliated service group maintaining the plan. These requirements apply only if the earned income of the self-employed individual or owner-employee or the compensation received as a shareholder-employee is taken into account in computing contributions or benefits under the plan.

(c) *Multiple employer plans*—(1) *General rule.* If a plan maintained by a member of an affiliated service group covers an individual who is not an employee of that member, but who is an employee of another member of that affiliated service group, the plan will be considered to be maintained by the member that does employ that individual. Thus, the plan will be considered to be maintained by more than one employer for purposes of section 413(c) (2) (relating to the exclusive benefit rule), (4) (relating to funding), (5) (relating to liability for funding tax), and (6) (relating to deductions). Therefore, a member of an affiliated service group may deduct contributions on behalf of individuals who are not employees of that member, if the individuals are employed by another member of that affiliated service group.

(2) *Special rule.* The multiple employer plan rule contained in paragraph (c)(1) shall not apply in the case of a controlled group of corporations (as described in section 414(b)) or a group of trades or businesses under common control (as described in section 414(c)).

(d) *Discrimination.* In testing for discrimination under section 401(a)(4) (requiring that contributions or benefits do not discriminate in favor of employees who are officers, shareholders, or highly compensated), all of the compensation paid to an employee must be considered in determining the contributions or benefits under a plan maintained by a member of an affiliated service group, without regard to the percentage of the organization employing the individual owned by the member maintaining the plan.

(e) *Example.* The provisions of this section may be illustrated by the following example.

(1) T is incorporated and Corporation T is a partner in a service organization. Corporation T employs only its sole shareholder and maintains a retirement plan. W and Z, the other partners in the service organization, are not incorporated. Each partner has a one-third interest in the service organization. The partnership has eight common law employees.

(2) Considering the partnership as a First Service Organization, Corporation T is an A Organization because it is a partner in the First Service Organization and regularly performs services for the partnership or is regularly associated with the partnership in performing services for third persons. Accordingly, the partnership and Corporation T constitute an affiliated service group.

(3) If the retirement plan maintained by Corporation T covers any of the common law employees of the partnership, it will be benefiting individuals who are not employees of the member of the affiliated service group maintaining the plan (Corporation T). As such, the plan will be considered to be maintained by more than one employer, and will be subject to the rules of section 413(c) (2), (4), (5), and (6) and the regulations thereunder. Thus, contributions by Corporation T on behalf of these individuals will not fail to be deductible under section 404 merely because they are not employees of Corporation T. In testing for discrimination under section 401(a)(4), all of the compensation paid to the employees of the partnership must be taken into account in determining their contributions or benefits under the plan, without regard to the percentage of the partnership owned by Corporation T.

(4) If the plan maintained by Corporation T covers partners W and Z, the plan must also satisfy the requirements listed in paragraph (b), to the extent they are applicable.

§ 1.414(m)–4 Effective dates.

(a) *Effective dates*—(1) *New plans.* In the case of a plan that was not in existence on November 30, 1980, section 414(m) and the regulations thereunder apply to plan years ending after November 30, 1980.

(2) *Existing plans.* In the case of a plan in existence on November 30, 1980, section 414(m) and the regulations thereunder shall apply to plan years beginning after November 30, 1980.

(b) *Frozen plans*—(1) *Defined contribution plans.* In the case of a defined contribution plan inexistence on November 30, 1980, that fails to satisfy the requirements of section 401(a) solely because of the application of section 414(m), the trust shall be treated as continuing to satisfy the requirements of section 401(a) after the effective date of section 414(m) if the plan is terminated and all amounts are distributed to the participants within 180 days after the latest of:

(i) [The date of the publication of this regulation in the **Federal Register** as a Treasury decision],

(ii) The date on which notice of the final determination with respect to a request for a determination letter is issued by the Internal Revenue Service, such request is withdrawn, or such request is finally disposed of by the Internal Revenue Service, provided the request for a determination letter was pending on [the date of the publication of this regulation in the **Federal Register** as a Treasury decision] or, in the case of a request for a determination letter on the plan termination, was made within 60 days after [the date of the publication of this regulation in the **Federal Register** as a Treasury decision].

(iii) If a petition is timely filed with the United States Tax Court for a declaratory judgment under section 7476 with respect to the final determination (or the failure of the Internal Revenue Service to make a final determination) in response to such request, the date on which the decision of the United States

Tax Court in such proceeding becomes final

(2) *Defined benefit plans.* In the case of a defined benefit plan in existence on November 30, 1980, that fails to satisfy the requirements of section 401 (a) solely because of the application of section 414(m), the trust shall be treated as continuing to satisfy the requirements of section 414(m) if the plan is terminated within 180 days after the latest of the dates determined in a manner consistent with paragraph (b)(1). However, deductions for contributions to the plan for plan years after the effective date of section 414(m) are limited to those necessary to satisfy the minimum funding standards of section 412.

§ 1.415–8 [Amended]

Par. 3. Paragraph (c) of § 1.415–8 is amended by adding "or by an affiliated service group (within the meaning of section 414(m)" before the words "is deemed maintained."

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-5045 Filed 2-25-83; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Permanent State Regulatory Program of Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) is considering modifying the deadline for Ohio to meet certain conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The rule changes needed to satisfy the three conditions of approval, which deal with the requirements governing formal adjudicatory hearings, would have to be made by the Chief of the Division of Reclamation. The State requested that the Secretary extend the deadline to prevent the Chief from needlessly adopting rules of limited duration because effective March 18, 1983, formal hearings before the Chief will be abolished.

DATE: Comments must be received by March 15, 1983 at the address below, no later than 4:30 p.m.

ADDRESS: Written comments must be mailed or hand-delivered to: Office of Surface Mining, Columbus Field Office, 2nd Floor, 2242 South Hamilton Road, Columbus, Ohio 43227.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Field Office Director, Office of Surface Mining, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

The Ohio program was conditionally approved effective August 16, 1982. The notice of conditional approval was published August 10, 1982 (47 FR 34688). In that document, the Secretary published a schedule for the State to meet each of the 11 conditions on the State program.

This notice is for the purpose of addressing the State's request for an extension that would establish a new deadline for the State to meet conditions (k)(3), (k)(4), and (k)(5) of 30 CFR 935.11. These conditions were due by February 8, 1983. The State noted, in its February 1, 1983 request, that these conditions deal with the requirements governing formal adjudicatory hearings. At the present time, the first opportunity for such formal hearings is before the Chief of the Division of Reclamation. The rule changes needed to satisfy the three conditions would have to be made by the Chief. However, effective March 18, 1983, under the provisions of Amended Substitute Senate Bill No. 240, formal hearings before the Chief will be abolished. Under the new bill, the first stage of formal administrative review will be before the Reclamation Board of Review. Consequently, the Board will become the administrative body responsible for promulgating rules governing formal hearings, and any rules adopted now by the Chief will no longer apply to hearings requested after March 18, 1983. The State requested, therefore, that the Secretary extend the deadline to prevent the Chief from needlessly adopting rules of limited duration and to allow the Board time to promulgate the new rules needed.

In accordance with the State's request, OSM is proposing that the deadline for the State to meet these conditions be extended until August 8, 1983. OSM requests comments on this proposed extension.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any new requirements; rather, it ensures that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 935 of Title 30 is proposed to be amended as set forth herein.

Dated: February 23, 1983.

J. R. Harris,

Director, Office of Surface Mining.

Text of Proposed Amendment

PART 935—OHIO

§ 935.11 [Amended]

1. Section 935.11 is amended in paragraphs (k)(3), (k)(4), and (k)(5) by substituting "August 8, 1983" for "February 8, 1983" each time it appears.

[FR Doc. 83-5030 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-83-01]

Drawbridge Operation Regulations; Bayou Chico, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Florida Department of Transportation and the Pensacola Urbanized Area Metropolitan Planning Organization, the Coast Guard is considering changing the regulations governing the State Highway 292 bascule span bridge across Bayou Chico, mile 0.3, Pensacola, Escambia County, Florida. The bridge provides a vertical clearance of 14.5 feet at the center of the closed span during mean low water.

Operating Regulations, § 117.245(i)(11) of Title 33 of the Code of Federal Regulations, were approved for the bridge on 20 July 1959. These regulations restricted the operation of the bridge during certain hours but were not implemented for reasons unknown. Thus, the bridge presently opens on signal at any time for any vessel. The proposed change would require that the draw continue to open on signal from all vessels but would not need to open for pleasure vessels Monday through Friday excluding holidays, from 6:00 a.m. to 8:00 a.m., 11:00 a.m. to 1:00 p.m., and 3:00 p.m. to 6:00 p.m. Exceptions to this restriction for pleasure vessels would be for the draw to open (a) on the hour and half-hour if these vessels are waiting to pass, (b) when at least five of that type are waiting to pass, or (c) in case of an emergency or when they are seeking refuge from severe storms. Moreover, pleasure vessels would be able to pass through the draw while it is open for non-pleasure vessels. This action is designed to relieve overland traffic congestion during the peak morning, noon and afternoon vehicular traffic periods, while still providing for the reasonable needs of pleasure vessels.

DATE: Comments must be received on or before April 14, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 9:00 a.m. to 3:00 p.m., Monday through Friday, at the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, at the address given above (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identifying the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

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

Discussion of the Proposed Regulation

Navigation through the bridge consists of pleasure vessels, commercial shrimpers and fishers, barge tows and government vessels. Vertical clearance at the center of the double leaf bascule span is 14.5 feet in the closed position during mean low water. Data submitted by the Florida Department of Transportation indicate that:

(1) For the period 19 August through 30 September 1982, Monday through Friday excluding holidays, the daily average number of vehicles crossing the bridge was 2721 between 6:00 a.m. and 8:00 a.m., 2498 between 11:00 a.m. and 1:00 p.m., and 4753 between 3:00 p.m. and 6:00 p.m., the peak morning, noon and afternoon traffic hours, respectively.

(2) For the period 1 August 1981 through 30 July 1982, Monday through Friday excluding holidays, the daily average number of bridge openings to pass just pleasure vessels was 0.16, 1.34 and 2.86 during the peak morning, noon and afternoon traffic hours, respectively.

Based on these comparative data, the Coast Guard feels that the proposed regulation should provide relief to overland peak traffic, while still meeting the reasonable needs of pleasure vessels particularly with the exceptions provided.

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since the impact is expected to be minimal for the reasons discussed above. In accordance with § 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.245(i)(11) to read as follows:

§ 117.245 Bayou Chico, mile 0.3, Pensacola, Florida.

* * * * *

(i) * * *

(11) The draw shall open on signal but need not open for pleasure vessels from 6:00 a.m. to 8:00 a.m., 11:00 a.m. to 1:00 p.m. and 3:00 p.m. to 6:00 p.m., Monday through Friday excluding holidays, except (i) on the hour and half-hour, (ii) when at least five such vessels are waiting to pass, or (iii) in emergencies or severe storms. The draw when otherwise opened for other vessels may be used by pleasure vessels.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: January 31, 1983.

J. M. Fournier,

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

[FR Doc. 83-5050 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 82-024]

Drawbridge Operation Regulations; Wappinger Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Consolidated Rail Corporation, the Coast Guard is considering a change to the regulations governing the Wappinger Creek railroad drawbridge at New Hamburg, New York to provide that the draw need not open unless six months advance notice is given. This proposal is being made because no requests to open the bridge have been received since 1978. This action should relieve the

bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before April 14, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District, will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Richard A. Gomez, project manager and LCDR Frank E. Couper, project attorney.

Discussion of Proposed Regulations

The Wappinger Creek drawbridge provides access for railroad traffic traveling between New Hamburg and Highsonville, New York. This drawbridge provides a vertical clearance of one foot above mean high water when in the closed position. In 1975, the bridge owner was authorized to operate the draw on advance notice. Since then, there has been a decrease in requests for openings, and no requests for openings have been made since 1978. No economic evaluation has been prepared because of minimal economic impact. This determination is based on the fact that no openings have been requested since 1978 and that no known entities or businesses use the waterway.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities, because no small entities will be affected by these regulations.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.190(f)(2) to read as follows:

§ 117.190 Navigable waters in the State of New York and their tributaries; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(2) Wappinger Creek; Conrail railroad bridge, mile 0.0 at New Hamburg. The draw need not open for the passage of vessels. However, should the needs of navigation warrant, the bridge shall be rehabilitated to the extent necessary to open the draw upon six months notice.

* * * * *

(33 U.S.C. 499; 49 U.S.C. 1655(g)(2); 49 CFR 1.46 (c)(5); 33 CFR 1.05-1(g)(3)).

Dated: February 8, 1983.

W. E. Caldwell,

Vice Admiral, Coast Guard Commander, Third Coast Guard District.

[FR Doc. 83-5051 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 770

Library Services and Construction Act Program; Titles I and III of the Library Services and Construction Act

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the current regulations that implement the Library Services and Construction Act Program. The proposed regulations would also change the title of Part 770 from "Library Services, Public Library Construction, and Interlibrary Cooperation" to the "Library Services and Construction Act Program." The major changes proposed would remove the regulatory provisions relating to both Title II (Public Library Construction) and Title IV (Older Readers Services). Under the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, no funds are authorized to be appropriated to carry out Title II for fiscal years 1982, 1983, or 1984. Thus, it is proposed that regulatory provisions relating to Title II be removed. For purposes of administering construction projects funded under the Appalachian Regional Development Act of 1965, as amended, Pub. L. 89-4, and to which LSCA Title II statutory requirements apply, the Secretary interprets 34 CFR Parts 74 (Administration of grants) and 76 (State-administered programs) as also applying to such projects. The Library Services and Construction Act was amended by the Older Americans Comprehensive Services Amendments of 1973, Pub. L. 93-29, to include Title IV.

However, this Title has never been funded and no specific funding authority was given in the Omnibus Budget Reconciliation Act of 1981, so that the proposed regulations would include no provisions relating to Title IV. Other changes in the regulations are intended to reduce regulatory burden through the reordering and clarification of current regulatory requirements.

DATES: Comments must be received on or before April 29, 1983.

ADDRESSES: Comments should be addressed to Mr. Robert Klassen, U.S. Department of Education, 400 Maryland Avenue SW., (Room 707, Brown Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Robert Klassen, U.S. Department of Education, 400 Maryland Avenue SW., (Room 707, Brown Building), Washington, D.C. 20202. Telephone (202) 254-9664.

SUPPLEMENTARY INFORMATION:

(a) These regulations are necessary in order to provide guidance to State library administrative agencies in the development of their State plans so that the plans may meet the purposes of the authorizing legislation. Originally enacted as the Library Services Act in 1956, Pub. L. 84-597, most recently the Library Services and Construction Act (LSCA) has been amended by Pub. L.

95–123, and has been extended through fiscal year 1984 by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35.

(b) The major differences between these proposed regulations and the final regulations published April 23, 1979 (redesignated at 45 FR 77368, November 21, 1980), which are currently in effect, is that these proposed regulations would no longer contain provisions relating to Titles II and IV of the LSCA (as addressed above) would be more clearly written, and to the extent possible, would impose less burden on recipients of LSCA funds. Examples of burden reduction include:

(1) Removing the definition of "public library services" from the regulations, since it presently appears in the statute;

(2) No longer requiring each State advisory council on libraries to have a specific percentage of the council represented by "library users";

(3) Eliminating the regulatory requirement that special consideration be assigned to handicapped persons, the institutionalized, persons residing in areas with inadequate or nonexistent library services, or persons in densely populated areas;

(4) Permitting the long-range program to cover a period of from three to five years; and

(5) leaving it to the States to determine the best available data for purposes of developing criteria to assure that priority will be given to programs or projects serving urban and rural areas with high concentrations of low income families (although it is expected that States will consider how current the information available is in determining the best available data). Proposed additions would provide greater clarity and include: (1) The expansion of program purposes to include the strengthening of metropolitan public libraries which serve as national or regional resource centers; (2) amending the definition of the term "disadvantaged" persons to reflect congressional intent more accurately; and (3) the inclusion of the complete definition of "limited English-speaking ability".

(c) The current regulations title would be changed to the "Library Services and Construction Act Program" to reflect the statute.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations apply to the "State library administrative agency" of each State. A State library administrative agency as defined in the statute is the official agency charged by the law of each State with the extension and development of public library services throughout the State, and which has adequate authority under State law to administer State plans in accordance with provisions of the LSCA. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments, and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 60th day after publication of this document will be considered before the Secretary issues final regulations. All comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period, in Room 707, Brown Building, 1200 19th St., NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirements of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary also particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 770

Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.034, Title I, Public Library Services, and No. 84.035, Title III, Interlibrary Cooperation)

Dated: February 18, 1983.

T. H. Bell,

Secretary of Education.

The Secretary proposes to revise Part 770 of Title 34 of the Code of Federal Regulations as follows:

PART 770—LIBRARY SERVICES AND CONSTRUCTION ACT PROGRAM

Subpart A—General

Sec.

770.1 The Library Services and Construction Act Program.
770.2 Who is eligible to apply for a grant under the Library Services and Construction Act Program?
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Authority: The Library Services and Construction Act, Pub. L. 91–600, as amended, 84 Stat. 1660 (20 U.S.C. 351), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act Program.

Under the Library Services and Construction Act, Federal funds are provided to assist States to—

(a) Extend and improve public library services in areas that are without these services or in which these services are inadequate;

(b) Establish, extend, and improve public library services including those for physically handicapped,

institutionalized, and disadvantaged persons;

(c) Strengthen State library administrative agencies;

(d) Promote interlibrary cooperation;

(e) Strengthen major urban resource libraries; and

(f) Strengthen metropolitan public libraries which serve as national or regional resource centers.

(20 U.S.C. 351; 353)

§ 770.2 Who is eligible to apply for a grant under the Library Services and Construction Act Program?

Under the Library Services and Construction Act Program, States are eligible to apply for Library Services grants under Title I and Interlibrary Cooperation grants under Title III of the Act, respectively.

(20 U.S.C. 351d)

§ 770.3 What regulations apply to the Library Services and Construction Act Program?

The following regulations apply to the Library Services and Construction Act Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 770.

(20 U.S.C. 1221e—3(a)(1))

§ 770.4 What definitions apply to the Library Services and Construction Act Program?

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 34 CFR Part 77:

Department
ED
Fiscal Year
Project
State

(b) The definitions provided for the following terms in section 3 (Definitions) of the Act, apply to this Part:

Annual program
Basic State plan

Library service (For the purpose of this definition the Secretary defines "Library materials" to mean books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, and processed video and magnetic tapes, printed, published, audiovisual materials, and non-conventional library materials designed specifically for the handicappped; and materials of similar nature.)

Library services for the physically handicapped
Public Library
Public Library services

Long-range program (Although section 3(12) of the Act refers to the long-range program as a "five year program", section 6(d)(1) of the Act provides that the long-range program may cover "a period of not less than three nor more than five years." In reconciling this inconsistency in the statute, § 770.13 (The long-range program) of this Part provides that the long-range program may cover a period of "not less than three nor more than five fiscal years."

State advisory council on libraries
State institutional library services
State library administrative agency
Major urban resource libraries.

(c) In addition, the following definitions apply to this Part:

The "Act" means the Library Services and Construction Act, as amended.

"Disadvantaged" persons means persons whose socio-economic or educational deprivation, or cultural isolation from the community at large, prevent them from receiving the benefits of library services designed for persons without these deprivations.

"Interlibrary Cooperation" under Title III of the Act, means the establishment, expansion and operation of local, regional, and interstate cooperative library networks. The purpose of a network is to provide for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center.

"Limited English-speaking ability", when used with reference to individuals, means individuals who—

(1)(i) Where not born in the United States or whose native language is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and,

(2) Because of the reason(s) listed in paragraph (1)(i), (ii), or (iii) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English. (See section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 2701 *et seq.*).

(20 U.S.C. 351d(b) (4))

Subpart B—How Does a State Apply for a Grant?

§ 770.10 The State plan and the State advisory council on libraries.

(a) To receive its allotment for any fiscal year a State shall—

(1) Have in effect a basic State plan approved by the Secretary, in accordance with § 770.11 (The basic State plan);

(2) Submit or update a long-range program in accordance with § 770.13 (The long-range program);

(3) Submit an annual program for each allotment which is desired, in accordance with § 770.14 (The annual program); and

(4) Establish a State advisory council on libraries pursuant to the requirements of section 3(8) of the Act.

(b) The State plan consists of three parts: the basic State plan, the long-range program, and the annual program. The State plan shall be made public.

(20 U.S.C. 351d; S. Rep. No. 1162, 91st Cong., 2nd Sess. 3)

§ 770.11 The basic State plan.

(a) The basic State plan shall consist of:

(1) A document which:

(i) Provides for the administration, or supervision of the administration, of the programs authorized by the Act by the State library administrative agency;

(ii) Provides assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of the Act;

(iii) Provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under provisions of the Act;

(iv) Provides assurances that any funds paid to the State in accordance with a long-range program (§ 770.13 of this Part) and an annual program (§ 770.14 of this Part) shall be expended solely for the purposes for which funds have been authorized and appropriated and that such fiscal control and fund accounting procedures have been adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the State, including any such finds paid to any other agency, under the Act;

(v) Provides satisfactory assurance that the State administrative agency will make such reports, in such form and containing such information, as the

Secretary may reasonably require to carry out its purposes, including reports of evaluations made under the State plans; and

(vi) Provides satisfactory assurance that the State administrative agency will keep such records and afford such access to these records as the Secretary may find necessary to assure the correctness and verification of such reports.

(2) The statements of criteria required by § 770.12 of this Part; and

(3) The certifications required by 34 CFR § 76.104.

(b) The Secretary approves the basic State plan for each fiscal year only if the Secretary determines that—

(1) The plan fulfills the conditions of a basic State plan as specified in paragraph (a) of this section and is in compliance with the requirements of the Act and of all applicable regulations; and

(2) The information contained in the basic State plan indicates that the State has adequate procedures to insure that the assurances and provisions of the basic State plan will be carried out.

(20 U.S.C. 351a(11); 351d(b); 351d(c))

§ 770.12 Criteria for determining the adequacy of public library services.

Among the criteria for determining the adequacy of public library services in geographical areas and for groups of persons in the State, the State library administrative agency shall include criteria which assure that priority will be given to programs or projects serving:

(a) Urban and rural areas with high concentrations of low-income families;

(b) Areas with high concentrations of persons with limited English-speaking ability.

(20 U.S.C. 351d(b)(4))

§ 770.13 The long-range program.

(a)(1) The State shall develop the long-range program with the advice of the State advisory council on libraries and in consultation with the Secretary.

(2) The State shall—

(i) Annually review and revise the long-range program in accordance with changing needs for assistance under the Act;

(ii) Use the results of evaluations and surveys by the State agency and the State advisory council on libraries in developing and revising the long-range program; and

(iii) Incorporate any revisions into the annual program for each fiscal year.

(b) The long-range program shall contain the following:

(1) A description of the State's identified present and projected library needs;

(2) A plan for meeting those identified needs with Federal funds made available under the Act, covering a specified period of not less than three nor more than five fiscal years.

(3) A statement of the following policies, criteria, priorities, and procedures, to be updated as required in meeting the State's library needs—

(i) Policies and procedures for the periodic evaluation of the effectiveness of programs and projects supported under the Act;

(ii) Policies and procedures for appropriate dissemination of the results of these evaluations and other information pertaining to these programs and projects;

(iii) Policies and procedures for the effective coordination of programs and projects supported under the Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library services programs; and

(iv) Criteria, policies, and procedures for interlibrary cooperation under Title III (Interlibrary Cooperation) of the Act.

(20 U.S.C. 351d(d); 351a(12); 354; 355e–2)

§ 770.14 The annual program.

The annual program shall contain:

(a) A description of a program for the use of funds under each of the titles of the Act;

(b) A description of how each program will fulfill the State's library needs stated in the long-range program, in a manner consistent with the policies, criteria, priorities, and procedures specified in the long-range program;

(c) The criteria used in allocating Title I funds for program purposes under section 102 of the Act. These criteria shall insure that the State will expend from Federal, State, and local sources an amount not less than the amount expended by the State from such sources for State institutional library services, and library services to the physically handicapped during the second fiscal year preceding the fiscal year for which the annual program is developed.

(d) During each fiscal year in which funds appropriated for Title I of the Act exceed $60,000,000, a program for that year under which the amount reserved under section 102(c) of the Act will be used for purposes set forth in section 102(a)(3) of the Act. During such a year, a State shall not reduce the amount paid to a major urban resource library below the amount that it received in the preceding year.

(e) A program description of the specific activities to be carried out by the State in the fiscal year—

(1) With funds for library services under Title I (Library Services) of the Act, for the purposes and activities stated in section 102 (Uses of Federal Funds) of the Act and § 770.30 (Library Services) of this Part; and

(2) With funds for interlibrary cooperation under Title III (Interlibrary Cooperation) of the Act, for the purposes and activities stated in section 302 (Uses of Federal Funds) of the Act and § 770.31 (Interlibrary Cooperation) of this Part;

(f) An annual review and revision of the long-range program. This shall take into consideration the results of evaluations of the State's library program.

(20 U.S.C. 351a(13); 354; 355e–2)

Subpart C—Payments and Reports

§ 770.20 State and local spending requirements as conditions for payment to the States.

The Secretary makes a payment to a State under Title I of the Act only after the Secretary has determined that—

(a) The State has satisfactorily assured the Secretary that it will have available for expenditure under Title I (Library Services) of the Act during the fiscal year of the allotment—

(1) From State and local sources—

(i) Sums sufficient to earn its minimum allotment as stated in section 5(a)(1) of the Act; and

(ii) Not less than the total amount actually expended for program purposes from State and local sources in the second preceding fiscal year.

(2) From State sources—Not less than the total amount actually expended for purgram purposes from State sources in the second preceding fiscal year.

(20 U.S.C. 351e)

§ 770.21 Reports.

The State agency shall submit to the Secretary one copy of all surveys, films, and other publications developed with Federal funds under the Act.

(20 U.S.C. 351d(b)(3)(A))

Subpart D—Federal Financial Participation

§ 770.30 Library services.

Funds allotted to a State for the purpose of section 101 (Grants to States for Library Services) of title I (Library Services) of the Act shall be used solely for paying the Federal share of the cost of activities specified in section 102 (Uses of Federal Funds) of the Act.

(20 U.S.C. 353)

§ 770.31 Interlibrary cooperation.

Funds allotted to a State for the purposes of section 301 (Grants to States for Interlibrary Cooperation Programs) of Title III (Interlibrary Cooperation) of the Act shall be used solely to pay the cost of carrying out a State plan as it relates to interlibrary cooperation. This includes—

(a) Planning for and taking steps leading to the development of cooperative library networks; and

(b) Establishing, expanding, and operating local, regional, State or interstate cooperative networks of libraries.

(20 U.S.C. 355e-1)

§ 770.32 Use of Federal funds by State library administrative agency.

In addition to the program activities specified in section 102 (Uses of Federal Funds) of the Act, funds allotted to a State under the Act for the purposes of section 101 (Grants to States for Library Services) of Title I (Library Services) of the Act, may also be used to pay the Federal share of the cost of the following activities of the State library administrative agency:

(a) Administration of the State plan submitted and approved under the Act and Subpart B of this Part, including obtaining the services of consultants;

(b) Statewide planning for and evaluation of library services;

(c) Dissemination of information concerning library services;

(d) The activities of the State advisory council on libraries and of other advisory groups and panels that may be necessary to assist the State library administrative agency in carrying out its functions;

(e) Strengthening the capacity of the State library administrative agency for meeting the needs of the people of the State; and

(f) Administrative costs necessary to carry out activities in paragraphs (b) through (e) of this section.

(20 U.S.C. 353(b))

§ 770.33 Federal and State shares of eligible expenditures.

(a) (1) Under section 7(b)(2) of the Act, every two years the Secretary promulgates the Federal share for each State under Title I (Library Services) of the Act.

(2) The State share for Title I (Library Services) is the difference between the costs under the State plan and the applicable Federal share.

(3) The Federal share for each State under Title III (Interlibrary Cooperation) is 100 percent.

(b) All Federal funds used for administrative costs specified in § 77.32(a) through (f) (Use of Federal funds by State library administrative agency) of this Part must be matched equally by non-Federal funds.

(c) In computing its share for library services under Title I (Library Services) of the Act, the State may consider only funds, regardless of their source, expended by it, or a political subdivision, for purposes of the State plan as it applies to Title I.

(20 U.S.C. 351e; 351f)

[FR Doc. 83-4791 Filed 2-25-83; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-2-FRL 2270-7]

Approval and Promulgation of Implementation Plans; Proposed Revision to the Commonwealth of Puerto Rico Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's proposal to approve in part a revision to the Commonwealth of Puerto Rico's Implementation Plan. This revision concerns fuel oil sulfur content limitations applicable to numerous sources in Puerto Rico.

DATE: Comments must be received on or before March 30, 1983.

ADDRESS: All comments should be addressed to : Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following locations for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278, or

Environmental Quality Board, 204 Del Parque Street, Santurce, Puerto Rico 00910.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Introduction

On March 3, 1981 the Commonwealth of Puerto Rico's Environmental Quality Board (EQB) submitted to the Environmental Protection Agency (EPA) a proposed revision to its Implementation Plan. During the spring and summer of 1982, EQB supplemented this original submittal with several additional submittals of technical information. The revision concerns the fuel oil sulfur content limitations (known as "sulfur asignment") applicable to 110 sources in Puerto Rico.

Sulfur assignments are regulated by the EQB in accordance with Rules 209 and 410 of the Commonwealth of Puerto Rico's "Regulation for the Control of Atmospheric Pollution" (the "Regulation"). Appendix IX to the Regulation (formerly called "Appendix B") lists source-by-source sulfur assignments and was originally approved by EPA on September 11, 1975 (40 FR 42191). Since that time, however, changes have been made to certain of the assignments approved by EPA and certain omissions to the originally approved list were discovered. Today's **Federal Register** notice addresses these changes and omissions.

The March 3, 1981 Puerto Rico submittal consists of a listing of sulfur assignments for 110 sources, a technical report in support of the revision request, proof of publication of a public hearing notice and a hearing examiner's report. The revision to the Puerto Rico Implementation Plan was submitted in accordance with all EPA requirements under 40 CFR Part 51, including a public hearing, which was held by the EQB on December 2, 1980.

Discussion

EPA has reviewed the sulfur assignments contained in Puerto Rico's March 3, 1981 revision request. As previously noted, this submittal identified sulfur assignments for 110 sources; however, only 95 of these have been determined to be subject to EPA review and approval. It has been determined that the sulfur assignments for the remaining 15 sources have not been revised from those previously approved by EPA on September 11, 1975 and hence are not further subject to EPA review.

Table 1 at the end of today's notice lists 85 sources whose specific sulfur assignments are being proposed in this action for EPA approval. Table 2 lists an additional 10 sources included in Puerto Rico's plan revision request whose sulfur assignments are not being acted on in today's notice. As will be discussed, the sulfur assignments for these 10 sources require additional justification for EPA approval. Table 3 lists the remaining 15 sources whose

sulfur assignments have not been changed from earlier EPA approved values.

EPA's review of the air quality impact analysis submitted by EQB with its March 3, 1981 request indicated that the air quality model used may have underpredicted maximum sulfur dioxide concentrations in high terrain areas close to a source. Consequently, it is possible that some of the sulfur assignments proposed by EQB could cause violations of the national ambient air quality standards for sulfur dioxide in areas of high terrain. In order to assess the air quality levels at these elevated locations, EPA conducted a review of the impact from the 95 sources subject to EPA review. This analysis was based on the use of EPA's Complex II model and included the use of meteorological data that was selected so as to yield the highest possible concentrations (a detailed discussion of this air quality modeling analysis is contained in an EPA Technical Support Document. This document is available for public inspection at the locations listed in the **"ADDRESSES"** section of today's notice).

Based on this EPA analysis, it was shown that sulfur assignments for 85 of the 95 sources could be approved as not causing a violation of the national ambient air quality standards for sulfur dioxide. Further, sulfur dioxide emissions from 80 of the 85 sources are included in the Prevention of Significant Deterioration (PSD) baseline and these emissions, therefore, are not subject to a PSD increment consumption analysis. The remaining five sources do not violate the PSD increments.

As a result of these determinations, EPA is proposing to approve the sulfur assignments for the 85 sources listed in Table 1 of today's notice. EPA intends to take no action at this time on the fuel oil sulfur assignments for the 10 remaining sources listed in Table 2, because of a number of unresolved questions concerning their potential to violate the national ambient air quality standards for sulfur dioxide. EQB and EPA have agreed to reevaluate the sulfur assignments for these sources at such time as a more refined air quality impact analysis can be completed.

New Sources

EQB has authority to establish, without EPA review, initial fuel sulfur content limitations for new sources. This "new source review program" is currently implemented under the procedures established in Part II, "Approval and Permit," of the Regulation. The sulfur limits for such new sources, implemented by EQB in accordance with procedures approved by EPA pursuant to provisions of 40 CFR 51.18, "Review of new sources and modifications," automatically become a part of the Puerto Rico implementation Plan. As a result, these sulfur assignments are federally enforceable and are not subject to EPA review.

In this context, in addition to the 110 sources identified in the March 3, 1981 submittal, there are 35 "new" sources that have been constructed after September 11, 1975 (the date when EPA approved source-by-source sulfur assignments for the majority of sources in Puerto Rico). The sulfur assignments for these 35 sources were developed by the EQB pursuant to EPA's approved new source review procedures and, consequently, are not subject to EPA review and approval. Although not the subject of the action being proposed today, these 35 sources are listed in Table 4 of today's notice for the purpose of public information.

Summary

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted on or before March 30, 1983 on whether the proposed Puerto Rico Implementation Plan revision should be approved or disapproved. EPA emphasizes that today's proposed approval action only deals with the sulfur assignments for the 85 sources listed in Table 1. Any comments dealing with the other sources listed in Tables 3 and 4 will be considered to the extent that the comments reflect on EPA's determination that the sources are not subject to EPA's review. The Administrator's decision regarding approval or disapproval of this proposed implementation plan revision will be based on whether it meets the requirements of Section 110 of the Clean Air Act and EPA regulations in 40 CFR Part 51.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that implementation plan approvals under Section 110 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 3709; January 27, 1981). Tha attached rule, if promulgated, constitutes an implementation plan approval under Section 110 within the terms of the January 27 certification. This action only approves Common wealth actions. It imposes no new requirements.

Under Executive Order 12291, this action is not Major. It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Region II office of EPA.

List of Subjects in 40 CFR Part 52

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

(Sec. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: December 9, 1982.

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

TABLE 1.—APPROVABLE SULFUR-IN-FUEL ASSIGNMENTS

[85 sources]

Source name and description	Old percentage standards	Proposed percentage standards
Abbott Chemical:		
Boiler-Econ	1.00	2.09
Boiler	1.00	2.09
Boiler Econ		2.09
Arroyo Dye Works: Nos. 1 and 2		2.50
Arroyo Pharma: No. 1		2.50
Asfalto Mayaguezano: Dryer		2.50
Asfalto D'Oeste: Boiler		2.50
Bacardi Corp. Catano:		
Boiler	2.00	2.50
Boiler		2.50
Boiler [1]		2.50
Betteroads San Juan: Oil burner		2.50
Bristol Corp:		
Boiler	1.00	2.50
Boiler		1.94
Bumble Bee:		
Boiler		2.50
Boiler [1]		2.50
Incinerator [1]		2.50
Cadillac Uniform: 2 Boilers		2.50
Caribe Hilton: 2 Boilers		2.50
Casera Food: 2 Steam Boilers		1.20
Central Cambalache:		
Nos. 1 and 2	3.10	2.50
Nos. 3 and 4		2.50
Central Coloso:		
Boiler 1	3.10	2.50
Boiler 2		2.50
Central Guanica:		
2 Boilers	1.00	2.50
No. 3	1.00	1.00
Central Mercedita:		
Boiler 5	3.10	2.50
Boilers 6 to 9		2.50
Central Plata:		
Boilers 618 and 650 HT	3.10	2.50
Boiler 1500 HT	3.10	2.50
Boiler 1800 HT		2.50
Central Roig:		
Boilers 1 to 5	3.10	2.50
Boiler 6		2.50
Central Medico: 2 Boilers		2.50
Cervecerta Corona: 3 Boilers		2.50
Cervecerta India:		
Boiler		2.50
Boiler	3.10	2.50
Condado Holiday: 2 Boilers		2.50
Consolidated Cigar: 2 Boilers		2.50
Destilleire Serrailes: Boiler	2.00	2.50
Durite Corp.: Boiler		2.50
Eli Lilly Co-Carolina:		
Boiler	3.10	2.50
Boiler	1.00	2.50
Boiler		2.50
Eli Lilly Co-Mayaguez:		
Boiler	3.10	2.50
Boiler		2.50
Incinerator		2.50
Glamourette Fashion: 6 Boilers		2.00
Goya De PR: Boiler		1.50

TABLE 1.—APPROVABLE SULFUR-IN-FUEL ASSIGNMENTS—Continued

[85 sources]

Source name and description	Old percentage standards	Proposed percentage standards
Hanes Textiles: 2 Boilers		2.50
Hospital Reg.-Bayamon: 2 Boilers		2.50
Inabon Asphalt Inc.: Dryer		2.50
Industrial Siderurgica:		
Boiler	2.00	2.00
Boiler		2.00
Industria Lechara Puerto Rico: 2 Boilers		2.50
Inland Chemicals: Steam Boiler		0.20
Inland Paper Co.: 2 Boilers		2.50
Inter Hosiery: No. 1		2.36
January Industries: Nos. 1 and 2		2.50
La Concha: 2 Boilers		2.50
Mecelo' Caguas: No. 1		2.50
Manhattan Hospital: Nos. 1 and 2		2.50
Merck, Sharp & Dohme:		
2 Boilers	1.00	2.50
2 Boilers		2.50
Molinos De Puerto Rico: Boiler		2.50
National Packing:		
3 Boilers		2.50
Boiler[1]		2.50
Neptune Packing: 2 Boilers		2.50
Olympic Mills:		
Boiler		2.50
Oiler Heater[1]		2.50
Boiler[1]		2.50
Pfizer Inc.:		
2 Boilers	1.00	2.01
Incinerator[1]		2.01
Phillips Core:		
66-950-0070	0.10	0.10
66-950-0060	0.10	0.10
51-000-0010	2.50	2.50
3.4-360-4010	2.50	2.50
3.2-360-2010	0.15	0.15
3.1-360-1020	0.15	0.15
3.1-360-1030	2.50	2.00
1.1-360-1010	0.15	0.15
1.3-360-3050	2.50	2.50
1.3-360-3020-30-40	2.50	2.50
1.3-360-3010	2.50	2.50
1.2-360-2050	0.15	0.15
1.2-360-2040	0.15	0.15
1.2-360-2030	2.50	2.50
1.2-360-2020	2.50	2.50
1.2-360-2010	0.15	0.15
1.1-360-1020	2.50	2.50
2.4-360-4050	0.15	0.15
2.4-360-4040	2.50	2.50
2.4-360-4030	0.15	0.15
2.4-360-4020	2.50	2.50
2.4-360-4010	2.50	2.50
2.1-360-1020	0.15	0.15
2.1-360-1010	0.15	0.15
51-000-0020		2.45
51-000-0030		2.45
51-000-0040		2.45
Placco Co.:		
Boilers	1.00	1.00
Tube Boiler	1.00	1.00
Oil Heater	1.00	1.00
Oil Heater		1.00
2 ASP Heaters		1.00
Ponce Asphalt-Ponce: Dryer		0.81
Ponce Candy:		
2 Boilers		2.50
Boiler[1]		2.50
Pittsburgh Plate & Glass Industries:		
2 Boilers	1.00	1.00
2 Boilers	1.00	0.01
Puerto Rico Asphalt-Aguadilla: Burner		2.50
Puerto Rico Asphalt-Arecibo: Burner		1.90
Puerto Rico Asphalt-Bayamon: Burner		1.90
Puerto Rico Asphalt-Carolina: Burner		2.50
Puerto Rico Asphalt-Salinas: Burner		2.50
Puerto Rico Dairy Inc.: 2 Boilers		2.50
Puerto Rico Distillers Inc. Arecibo:		
3 Burners	3.10	2.50
Nos. 2 and 3	3.10	2.50
Puerto Rico Glass:		
Nos. 1 to 3	1.50	2.00
No. 4	1.50	1.50
No. 5	0.50	0.50

TABLE 1.—APPROVABLE SULFUR-IN-FUEL ASSIGNMENTS—Continued

[85 sources]

Source name and description	Old percentage standards	Proposed percentage standards
Puerto Rico Electric Power Authority—Aguadilla: Jet PPK 1-1 and 1-2		0.50
Puerto Rico Electric Power Authority—Ceiba:		
GT PB K 1-1 and 1-2	0.50	0.50
Jet		0.50
Puerto Rico Electric Power Authority—Covadonga: Jet PPK 1-1 and 1-2		0.50
Puerto Rico Electric Power Authority—Jobos:		
GT PBK 1-1 and 1-2		2.50
Jet PPK 1-1 and 1-2		
Puerto Rico Electric Power Authority—Palo Seco:		
Units 1 and 2	2.50	2.50
Units 3/1 and 3/2	2.50	2.50
Units 4/1 and 4/2	2.50	2.50
GT PBK 1-1	0.50	0.50
GT PBK 1-2	0.50	0.50
GT PBK 2-1	0.50	0.50
GT PBK 2-2	0.50	0.50
GT PBK 3-1	0.50	0.50
GT PBK 3-2	0.50	0.50
Jet PPK 1 and 2	0.15	0.50
Jet 1	0.15	0.50
Puerto Rico Electric Power Authority—San Juan:		
Units 5 and 6	1.50	2.00
Units 7-1 and 7-2	1.50	2.00
Units 8-1 and 8-2	1.50	2.00
Units 9-1 and 9-2	1.50	2.00
Units 10-1 and 10-2	1.50	2.00
Jet PPK 1	0.15	0.50
Jet 1		0.50
Units 1-4	1.50	1.50
Puerto Rico Electric Power Authority—Vega Baja: GT PBK 1-1 and 1-2		0.50
Puerto Rico Electric Power Authority—Yabucoa: GT PBK 1-1 and 1-2		0.50
RCA Del Caribe: 3 Boilers		2.00
Rexach Asphalt—San Juan: Burner		1.75
San Juan Cement:		
Kiln #1-3	3.10	2.50
3 Boilers		2.50
Schering Pharmacy:		
2 Boilers	3.10	2.50
Boiler		2.50
Squibb Manufacturing Inc.:		
2 Boilers		2.48
Brule Incinerator		2.48
Garver & Davis		2.48
Waste Heat Boiler		2.48
Incinerator[1]		0.50
Boiler[1]		2.48
Star—Kist Tuna:		
4 Boilers		2.50
Boiler[1]		2.50
Sun Harbor: 2 Fire Tube Boilers		2.40
To—Rico Inc.: Boiler		2.50
Travanol Labs: Boiler		2.50
Union Carbide Films: 2 Boilers	1.00	2.50
Union Carbide Grafito:		
36 Furnaces	0.20	0.20
Boiler	0.20	0.20
Boiler		0.20
Cis-1, 2+3[1]		0.20
2 Pre-Heaters[1]		0.20
Hot Water Heater[1]		0.20
Incinerator[1]		0.20
Univis Optical: Nos. 1 to 3		2.50
UpJohn Corp.: 2 Boilers	1.00	2.50
Visoske Shops Inc.: Boiler		2.50
Vanity Paper Co.: No. 1		2.50
Winthrop Labs: 2 Boilers		2.00
Yabucoa Sun Oil:		
Boilers	3.10	2.50
Crude Heaters	3.10	2.50
Heaters	3.10	2.50
Hydrotreater	3.10	2.50
H2Plant Heater	3.10	0.50
Desulf. Heater	3.10	2.50
Solar Generator	3.10	2.50

[1] The sulfur assignment for this emission point is not subject to EPA review and approval since it was developed by EQB pursuant to EPA's previously approved new source review procedures. This emission point is listed for public information purposes only.

TABLE 2.—SULFUR-IN-FUEL ASSIGNMENTS REQUIRING ADDITIONAL TECHNICAL JUSTIFICATION

[10 sources]

Source name and description	Old percentage standards	Proposed percentage standards
Betterroads Asphalt Aguada: Oil Burner	—	2.50
Cartonera Nacion: 2 Boilers	—	2.30
Commonwealth Oil Refining Corp.:		
HCC CO BA-154	—	1.00
HCC CO BA-2-154	—	1.00
Boiler B-803	1.00	1.00
Boiler B-804	1.00	1.00
Vacuum BA-151B	1.00	1.00
Aux. Crude BA-102	1.00	1.00
Crude Vac BA101-151A	1.00	1.50
Lt. Crude BA 402-4	1.00	1.00
Hot Belt BA-201	1.00	1.00
Crude-Vac BA-101-151	1.00	1.50
Visbreaker BA-1101-2	1.00	1.00
Unif. Stripv BA-1302	1.00	1.00
Crude Charge BA-1302	1.00	1.00
Platfor. H 103-105	0.01	0.01
EPC Columo AH-701	1.00	1.00
Plat. Rerun AH-700	1.00	1.00
Prellact. DH-107	1.00	1.00
Xylene Splitter H901	0.01	0.01
Plat Dpent. PH-106	1.00	1.00
Detol H-801	0.01	0.01
Unif. Charge PH-101	1.00	1.00
Unif. Strip. PH-102	1.00	1.00
Clay Tower SUH-302	—	1.00
Xylene Splitter H902	—	1.00
Platfor. AH-100-102	0.01	0.01
Clay Tower AH-350	1.00	1.00
Xyl .Split. REBAH-351	1.00	1.00
Unit Depent. HT AH-20	1.00	1.00
Unif. Charger AH-200	1.00	1.00
Plat. Depent. AH-103	1.00	1.00
Boiler B-501-2	1.00	1.00
THD AH-400-401	1.00	1.00
Boiler 503-4	—	1.00
OX. Split REB. H-353	—	1.00
Reboiler H-951	1.00	1.00
Reboiler H-1952	—	1.00
Fractioner H-1202	1.00	1.00
Stabilizer H-1201	1.00	1.00
Octafiner H-1200	1.00	1.00
Octafiner H-251-3	1.00	1.00
Fractionator H-202	.01	.01
Octafiner H-200	.01	.01
Stabilizer H-201	.01	.01
Claytower SCH-301	1.00	1.00
Boiler B-701	.50	.50
Boiler B-702	.50	.50
Boiler B-703	.50	.50
HCC Flue Gas STK PT2	.01	.01
HCC Preheat BA-152A	1.00	1.00
HCC Preheat BA-152B	1.00	1.00
HCC Preheat BA-152C	1.00	1.00
HCA Preheat BA-152A	1.00	1.00
HCC Preheat BA-152B	1.00	1.00
HCC Preheat BA-152C	1.00	1.00
Flue Gas Stack PT1	.01	.01
Acid Plant	.01	.01
Dupont Puerto-Rico Inc.: 2 Boilers	—	2.50
Oxochem:		
Steam Boiler	1.00	1.00
Flair	.01	1.00
Feet HT X4101A	.01	.01
Feet HT XH201	.01	.01
Feet HT XH101B	.01	.01
SYN-GAS Flair	.01	.01
Peerless: Heater	1.50	.20
Ponce Asphalt—Humacao: Dryer	—	1.00
Ponce Cement:		
Kilns 215	3.10	2.50
Kilns 104	3.10	2.50
Kilns 144	3.10	2.50
Kilns 486	3.10	2.50
Kilns 104	—	2.50
Kilns 104	3.10	2.50
Lime Kiln	3.10	2.50
3 Boilers	3.10	2.50

TABLE 2.—SULFUR-IN-FUEL ASSIGNMENTS REQUIRING ADDITIONAL TECHNICAL JUSTIFICATION—Continued

[10 sources]

Source name and description	Old percentage standards	Proposed percentage standards
Puerto Rico Electric Power Authority—Guayanilla:		
Units 1,2,3,4	1.00	1.50
Units 5–1, 6–1, 6–2	1.00	1.50
GT PBK 1–1 and 1–2	.50	.50
Jet	.15	.50
Union Carbide Caribe:		
23 Furnaces S5–1	.01	.01
Steam SPHEATER S5–2	.01	.01
Steam SPHEATER S5–3	.01	.01
RECYC SPHEATER S5–4	.01	.01
Turbine GEN S3–4	.05	.50
Boiler I S3–3	.50	1.00
Boiler II S3–3	.50	1.00
Boiler III S3–3	.50	1.00
Hidrotreater S5–5	.01	.01
Oxide II IGT S6-20	—	.50
Tetralin HET. S6–13	—	.01
Pack Boiler [1]	—	.50
Waste Boiler [1]	—	.50

[1] The sulfur assignment for this emission point is not subject to EPA review and approval since it was developed by EQB pursuant to EPA's previously approved new source review procedures. This emission point is listed for public information purposes only.

TABLE 3.—SULFUR-IN-FUEL ASSIGNMENTS PREVIOUSLY APPROVED BY EPA

Source name and description	Old percentage standards	Proposed percentage standards
A. Sulfur-In-Fuel Assignments Which Were Not Revised (6 sources)		
Caribbean Gulf:		
CH–4	1.50	1.50
GFH–2	1.50	1.50
GFH–1	1.50	1.50
GSH–1	1.50	1.50
CH–2	1.50	1.50
YB–4 and 5	1.50	1.50
PH–201	1.50	1.50
PH–202	1.50	1.50
CH–3	1.50	1.50
YB–3	1.50	1.50
N–2	1.50	1.50
CH–6 [1]		1.50
Diazlite, Inc.: Nos. 1 to 3	1.00	1.00
Ponce Asphalt—Santa Isabel: Dryer	1.00	1.00
Puerto Rico Olefins:		
Nos. 1 to 4	.60	.60
No. 5	.01	.01
Puerto Rico Electric Power Authority—Aguirre:		
Units 1/1 and 1/2	2.50	2.50
Units 2/1 and 2/2	2.50	2.50
GR PBK 2–1 and 2–2	.50	.50
GR PBK 1–1 and 1–2	.50	.50
Puerto Rico Electric Power Authority—Mayaguez:		
IND–GT 1 and 2	.50	.50
GT PBK 3–1 and 3–2	.50	.50
GT PBK 4–1 and 4–2	.50	.50
Jet	.50	.50
B. Sulfur-In-Fuel Assignments Which Are Governed By Generic Sulfur Ceiling (9 sources)		
Central Aguirre: Boilers 21 and 22	3.10	2.50
Central Eureka: No. 1	3.10	2.50
Central Fajardo: No. 2	3.10	2.50
Central Iguaidad: No. 1	3.10	2.50
Fibers Int.: No. 1	3.10	2.50
International Paper: Nos. 1 to 3	3.10	2.50
Puerto Rico Cement—Ponce: Nos. 1 to 5	3.10	2.50
Puerto Rico Chemical: 2 Heaters	3.10	2.50
Puerto Rico Distillers—Camuy:		
No. 1	3.10	2.50
No. 2	3.10	2.50

TABLE 3.—SULFUR-IN-FUEL ASSIGNMENTS PREVIOUSLY APPROVED BY EPA—Continued

Source name and description	Old percentage standards	Proposed percentage standards
No. 3	2.50	2.50

[1] The sulfur assignment for this emission point is not subject to EPA review and approval since it was developed by EQB pursuant to EPA's previously approved new source review procedures. This emission point is listed for public information purposes only.

TABLE 4.—NEW SOURCES LISTED IN THE JUNE 8, 1981, SULFUR ASSIGNMENT INVENTORY BUT NOT CONTAINED IN APPENDIX IX (35 SOURCES)

Source	Units	Sulfur assignment
AAA	Incinerator	0.50
Alimentos Borinquen	Keystone Boiler	2.50
Bacardi Corp.-Palo Seco	3 Boilers	2.50
Betteroads Asphalt-Arecibo.	Oil Burner	2.50
Betteroads Asphalt-Bayamon.	Oil Burner	2.50
Borinquen Container	Boiler	2.50
Bristol Corp-Mayaguez	Boiler	2.50
Caribe Isoprene	Boiler	1.50
Cartanera Antilles	2 Boilers	2.50
Coamo Poultry	2 Boilers	2.50
Cyanmid Agric	Boiler	2.00
	Incinerator	2.00
David & Geck	Boiler	2.50
	Boiler	0.80
Eli Lilly/Fermentation-Carolina.	2 Boilers	2.50
FineTex	3 Boilers	2.50
La Famorsa	2 Boilers	2.00
Hosp. Area Manati	2 Boilers	2.50
Life Savers	2 Boilers	2.50
Molinos Nacionales	Boiler	2.50
Owens Illinois	2 Glass Furnaces	2.50
Owens Illinois	Boiler	2.50
Phillips Paraxylene	6 Heaters	2.00
Puerto Rico Electric Power Authority-Aguirre.	4 Comb. Cycle 1–1 to 1–4.	2.00
	4 C.C. 1 GT 1 to 4	2.00
	4 Comb. Cycle 2–1 to 2–4.	2.00
	4 C.C. 2 GT 1 to 4	2.00
Puerto Rico Container	2 Boilers	2.50
Puerto Rico Pigments	Steam Boiler	2.50
Puritana Mfg	2 Boilers	2.50
Rexach Asphalt IV-Caguas.	Burner	1.75
Rico Banana	2 Boilers	2.34
Rico Chemical Corp	2 Boilers	1.50
Roche Products	3 Boilers	2.50
Savoy	Boiler	2.00
Searle Pharmacy	Boiler	2.50
Sublistatica I	2 Boilers	2.50
Sublistatica II	2 Boilers	2.50
Warner Lambert Co	2 Boilers	2.50
Western Industrial	Steam Gen. Boiler	2.50

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Subtitle A

Coastal Barrier Resources Act; Section 4(a)(2), Opting-in Provision

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law, (Pub. L. 97–348). The law establishes the Coastal Barrier Resources System delineated on maps incorporated by reference in the legislation, and prohibits most Federal expenditures and financial assistance for development within the units of that System. These provisions of the Act became effective immediately, except that the ban on new Federal flood insurance in these units will go into effect on October 1, 1983.

Significant responsibilities are also assigned to the Secretary of the Interior by the legislation. This proposed rule describes the approach the Department of the Interior (DOI) will adopt to interpret paragraph 4(a)(2) of CBRA which allows landowners with property on a coastal barrier or associated landform that was not included in the System to elect to have their property included. The paragraph also requires the Secretary of the Interior to establish regulations for this purpose within 180 days of enactment of CBRA.

DATE: Comments must be received on or before March 18, 1983.

ADDRESS: Comments should be directed to Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Manager, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, D.C. 20240. (202–343–4905).

SUPPLEMENTARY INFORMATION: Based on the language in the Omnibus Budget Reconciliation Act of 1981 (OBRS) and its legislative history, the Department of the Interior developed criteria for delineating the undeveloped coastal barriers on the Atlantic and Gulf Coasts of the United States. These criteria were the basis for both the maps proposed by DOI under OBRA and the final maps designated by Congress as part of CBRA. Copies of the CBRA maps have now been distributed to all affected State executives, State coastal zone management agencies, counties, and Federal agencies. On November 19, 1982, the Department published interpretive guidelines and a general statement of policy (47 FR 52388), pertaining to its responsibilities under Section 4 of the Act. With completion of minor and technical boundary modifications, as mandated by CBRA, the unit boundaries depicted on the maps of the CBR System become fixed and cannot be modified without an amendment to the Act.

This proposed rule will permit landowners on coastal barriers or associated landforms which have not been included in the Coastal Barrier Resources System to put their land in the system within one year of the date of enactment of this bill. Once exercised, this option will not be revocable by the landowner or his successors in title, and the prohibition against Federal assistance contained in the bill will apply as if the land has been included in the System from the outset.

(1) *Environmental Effects.* The environmental impacts of administering the action to be undertaken pursuant to this proposed rule have been carefully considered. Based upon the draft environmental impact statement issued on May 21, 1982, concerning the same type of resource considerations, and the public comments on that document, it has been determined that this proposed rule will have no significant impact on the environment. A Finding of No Significant Impact has been prepared and a copy may be obtained by writing the Manager of the Coastal Barriers Task Force (see address).

(2) *Statement of Effects.* The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that this proposed rule 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.). A copy of the combined document supporting these determinations may be obtained through the Coastal barriers task Force (see address). It is anticipated that this "opting-in" provision will be exercised by very few individuals and, therefore, will not have a significant economic impact.

(3) *Paperwork Reduction Act.* This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

(4) *Authorship Statement.* This document has been prepared by the Coastal Barriers Task Force within the Department of the Interior. The Chairman of the Task Force is Mr. Ric Davidge, Office of the Assistant Secretary for Fish and Wildlife and Parks.

(5) *Public Comment Period.* Interested persons may submit written comments, regarding the proposed rule to the Chairman of the Coastal Barriers Task Force, Department of the Interior, Washington, D.C. 20240. All comments must be received on or before March 18, 1983.

(6) *Identification of Subjects.* An identification of subjects is not necessary because this document is not designed to be codified in the Code of Federal Regulations. Under CBRA, action on subsection 4(a)(2) must be completed one year following enactment of the legislation. Accordingly, the department does not propose to codify this proposed rule.

Opting-in to the CBRS

Criteria

The legislative history of paragraph 4(a)(2) states "that the only limitation intended on the application (of this provision) is that the property sought to be brought into the System be located on a coastal barrier or associated landform within reasonable proximity of and physically comparable to an established unit of the System."

The following categories of areas qualify for inclusion under this paragraph:

(1) Any area contiguous with and located on the same coastal barrier landform as an existing unit of the Coastal Barrier Resources System.

(2) Any coastal barrier or portion thereof containing less than ¼ mile of ocean-facing shoreline.

(3) Properties, regardless of location, on the same coastal barrier landform as a unit of the Coastal Barrier Resources System, which are not contiguous with the unit.

(4) Any coastal barrier or portion thereof protected for recreation, Wildlife refuge, sanctuary, or scientific purposes.

(5) Coastal landforms containing a core of consolidated sedimentary material. Each area must be physically comparable with an existing unit's characteristics. An area will not be included if it is highly developed or if it is separated by a natural barrier, such as a major river or substantial cliffs, from an existing unit. It must also be within five miles of an existing unit. Where questions concerning these criteria arise, owners are encouraged to submit an application which will be carefully considered on a case-by-case basis.

Proof of Ownership

To be included in the system, one of the following proofs of ownership or control of the land must be provided:

1. Fee simple title or its functional equivalent, or

2. An heir in possession of "heir's" property; or

3. A trustee or trustees of a perpetual trust with control of use and disposition of the property in question.

Procedures for Registration

To become certified as part of the System, landowners who meet the requirements must:

1. Secure an official coastal barrier map or appropriate 1:24,000 quadrangle map from the U.S. Geological Survey and outline the property on the map. (Procurement information attached.)

2. Submit the map, with proof of property ownership, to Mr. Frank McGilvrey, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, Postmarked no later than October 18, 1983.

3. Upon notification of acceptance by the Department of the Interior, file the election in accordance with the real property laws regulating the sale or other transfer of land or other real property of the State in which the land is located. Such filing must indicate that the property in question has been irrevocably included within the CBRS.

4. Notify the Department of the Interior that filing has been completed.

Once in the system, the property will be treated as any other land in the System. Transfer of ownership cannot remove the property from the System. Only an amendment to the Act by the Congress can do so.

We wish to emphasize that the opting-in provision is entirely voluntary, is a one-time-only option, and must be submitted by October 18, 1983. After that date no more changes will be made to the system except by amendment to the Act.

Map procurement information: Individual unit maps may be secured for $3.25 from: Eastern, National Cartographic Information Center, U.S. Geological Survey, 536 National Center, Reston, Virginia 22092, Telephone: (703) 860-8336.

Make checks payable to: U.S. Geological Survey.

Dated: February 8, 1983.

Ric Davidge,

Chairman, Coastal Barriers Task Force.

Dated: February 9, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-5007 Filed 2-25-83; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 93

[CGD 80-159]

Stability Requirements for Great Lakes Vessels

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the stability requirements for cargo ships operating on the Great Lakes of North America by adding a new subpart to Part 93 of 46 CFR Subchapter I (Cargo and Miscellaneous Vessels) specifying damage stability requirements for these vessels. The requirements being considered are based on an extensive study by the Maritime Administration and a recommendation by the National Transportation Safety Board. The purpose of this Advance Notice is to identify the specific standards that the Coast Guard is considering.

DATE: Comments must be received on or before May 31, 1983.

ADDRESSES: Written comments should be sent to Commandant (G-CMC/44) (CGD 80-159), U.S. Coast Guard, Washington, D.C. 20593. The comments and materials referenced in this notice will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays at the Marine Safety Council (G-CMC/44), Room 4402, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: LT Thomas M. Curelli, Office of Merchant Marine Safety (G-MTH-5/13), Room 1308, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-2187.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments are solicited not only on the technical merits of the proposed standard, but also on the economic, environmental, and personnel safety effects that such a regulation would have. Persons submitting comments should include their names and addresses, identify this advance notice (CGD 80-159) and the specific sections of the proposal to which the comments apply, and give reasons for the comments. If acknowledgment of receipt of a comment is desired, a stamped self-addressed postcard or envelope should be enclosed. The proposed rules may be changed in light of comments received. All comments received will be considered before further rulemaking action is taken. No public hearing is planned, but one will be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are LT Thomas M. Curelli, Office of Merchant Marine Safety, and LCDR W. Short, Office of the Chief Counsel.

Discussion of the Proposed Regulation

The accidents on the Great Lakes in the past 25 years involving sinkings having the greatest loss of life have been the Carl Bradley, the Daniel T. Morrell, and the Edmund Fitzgerald. Each of these vessels sank within a very short time after structural failure or other failure leading to massive loss of buoyancy due to flooding.

The Marine Board of Investigation's report on the loss of the Edmund Fitzgerald (Report No. USCG 16732/64216, 26 July 1977) indicated that a damage stability standard that includes at least a minimum level of subdivision may have prevented the loss of the ship or at least slowed the sinking enough to allow the crew to safely abandon ship.

A minimum standard would also lessen the risk of a total stoppage or restriction of vessel traffic in a restricted channel due to the sinking of a vessel, such as occurred in 1972 when the Sidney E. Smith, Jr. sank in the St. Clair River. The increase in size of vessels seriously increases the risk that a collision or grounding might block a channel to all navigation. In areas where the vessel operates with small bottom clearance, the vessel might settle on the bottom even with watertight subdivision: but salvage would be much easier and any traffic blockage would usually be of shorter duration.

In the **Federal Register** issue of March 16, 1978, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) at 43 FR 10946 to solicit comments concerning the development of damage stability standards for Great Lakes bulk dry cargo vessels. This ANPRM indicated that a minimum level of subdivision was under consideration, solicited comments on specific questions of technical and economic nature, and referred to the ongoing Maritime Administration (MARAD) study of economic benefits of watertight subdivision of Great Lakes vessels. Nineteen comments were received in response to this ANPRM.

The MARAD study, entitled "Economic Benefits of Improved Watertight Subdivision for Great Lakes Bulk Carriers", was completed in December 1978. A copy of the study may be obtained for $16.50 from the National Technical Information Service, Springfield, Va. 22151 (Report No. PB295086). A second ANPRM, published on August 14, 1980 at 45 FR 54095, discussed the aspects of this study from a safety point of view and solicited further comments. Review of the response to this second ANPRM indicates that not all interested parties had reviewed it. To correct this deficiency, and to allow all persons connected with the Great Lakes bulk fleet, as well as other interested parties, to develop meaningful comments prior to the Coast Guard's regulatory drafting efforts, the comment period was extended an additional 108 days to May 1, 1980. In addition, an open public conference was held on December 11, 1980 in Cleveland, Ohio. In that conference, representatives of all segments of the Great Lakes bulk carrier industry met with Coast Guard representatives to discuss—

(1) The background of subdivision levels of safety in the Great Lakes fleet;

(2) The feasibility of bulkheading to produce various levels of subdivision safety; and

(3) Possible alternatives to subdivision safety.

The Coast Guard has taken into consideration comments resulting from the above mentioned public participation and the results of the Maritime Administration's study. The Coast Guard considers that there is a need for a published minimum degree of subdivision protection from groundings and collisions and is ready to make a specific proposal. The damage stability standard being considered is similar to that required by the 1966 International Convention on Load Lines for Type A and reduced freeboard Type B vessels.

In order to comply with The President's Executive Order 12291 of February 17, 1981, the Coast Guard, in promulgating new regulations, must analyze the proposal to insure that the potential benefits to society outweigh the potential costs to society. In an effort to conduct a complete and accurate assessment of the effects of the proposal, it has been decided to publish a third Advance Notice of Proposed Rulemaking. The Coast Guard is particularly interested in comments and figures regarding the economic impact of such a proposal as it would affect newly

constructed vessels. Comments are also requested on the technical details of the proposal such as the extents of damage and the survival conditions.

Comments on the related subjects are desired from all persons having knowledge of the Great Lakes bulk cargo fleet operation and the following specific questions are listed:

1. *To the general public.*

The Coast Guard is considering this rulemaking to reduce the chance of the rapid loss of an entire ship due to flooding. The general (statistical) safety record of our Great Lakes bulk carriers is as good or better than any other method of transportation.

Does the good safety record of Great Lakes ships justify designing new bulk carriers without some minimum flooding resistance, such as one compartment subdivision?

2. *To the masters and crew.*

Maintaining watertight integrity of watertight doors in way of unloading belts in the bottom tunnel of self-unloader ships is difficult due to leakage of the sealing gaskets. The Coast Guard is considering a requirement for increased bilge pumping capacity in the tunnel to control such leakage.

Can the existing watertight door seals be made tight prior to each voyage?

If not, how much leakage might occur?

3. *To the steamship companies.*

a. How should the MARAD economic report of December 1978 be modified to remain valid with regard to the cost of placing additional watertight bulkheads in bulk carriers to achieve one or two compartment protection? Specific reference is made to table X (page V–2) and figures A2 through A13 (pages a–4, a–15) which show some combinations not possible and some possible at an additional cost of up to $1 million for a new ship (i.e. an additional 1% of the total cost of a new ship).

b. Although this Advance Notice does not propose retrofitting of existing vessels, a major conversion or modification to an existing vessel in the future may cause the vessel to have to comply with these standards, necessitating changing the existing screen (non-watertight) bulkheads to be watertight. How should the dollar projections for retrofit shown in table X of the MARAD report be corrected? What escalation/inflation factor should be considered?

4. *To the port authorities on the Great Lakes.*

a. Although a sinking in harbor is not apt to cause a total loss of the crew, the temporary blockage of the harbor is a concern to port authorities. What would be the relative loss of revenue to all concerned if your port was directly blocked by the sinking of a large vessel for an extended period of time?

b. What would be the effect of the closing of the St. Mary's River, Detroit River, Welland Canal, or St. Lawrence Seaway have on the traffic and commerce in your area of responsibility?

List of Subjects in 46 CFR Part 93

Cargo vessels, Marine safety, Great Lakes.

PART 93—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 93 of Chapter I of Title 46, Code of Federal Regulations, as follows:

1. By adding the following to the Table of Contents:

Subpart 93.60—Damaged Stability and Floatability (Subdivision) for Great Lakes Vessels

Sec.

93.60–1 Applicability.
93.60–5 Definitions.
93.60–10 Calculations.
93.60–15 Character of damage.
93.60–20 Extent of damage.
93.60–25 Permeability of spaces.
93.60–30 Survival conditions.

2. By revising Subpart 93.01 to read as follows:

Subpart 93.01—Application

§ 93.01–1 General.

This part applies to—

(1) Each vessel contracted for on or after November 19, 1952 on an international voyage;

(2) Each vessel whose intact stability requires special consideration as determined by the Commandant or the Officer in Charge, Marine Inspection; and

(3) Each vessel whose damaged stability and floatability (subdivision) requires special consideration as determined by the Commandant.

3. By adding a new Subpart 93.60 to read as follows:

Subpart 93.60—Damaged Stability and Floatability (Subdivision) for Great Lakes Vessels

§ 93.60–1 Applicability.

This subpart applies to each vessel contracted for on or after (the effective date of these regulations) that is engaged on a voyage solely between ports within the limits of the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

§ 93.60–5 Definitions.

(a) As used in this subpart, "Length" ("L"), "Breadth" ("B"), and "Moulded Depth" ("D") are as defined in § 45.3 of Subchapter E (Load Lines) of this chapter.

(b) "Bulkhead Deck" means the uppermost deck to which watertight bulkheads and the watertight shell extend.

§ 93.60–10 Calculations.

(a) Each vessel must be shown by design calculations to meet the survival conditions in § 93.60–30 in each condition of loading and operation, assuming the damage specified in § 93.60–15.

(b) When doing the calculations required by paragraph (a) of this section, the virtual increase in the vertical center of gravity due to a liquid in a space must be determined by calculating either—

(1) The free surface effect of the liquid with the vessel assumed heeled five degrees from the vertical; or

(2) The shift of the center of gravity of the liquid by the moment of transference method.

(c) In calculating the free surface effect of consumable liquids, it must be assumed that, for each type of liquid, at least one transverse pair of wing tanks or a single centerline tank has a free surface. The tank or combination of tanks selected must be those having the greatest free surface effect.

(d) When doing the calculations required by paragraph (a) of this section, the buoyancy of any superstructure directly above the side damage must not be considered. The unflooded parts of superstructures beyond the extent of damage may be considered if they are separated from the damaged space by watertight bulkheads and no progressive flooding of these intact spaces takes place.

§ 93.60–15 Character of damage.

(a) Design calculations must show that each vessel can survive damage—

(1) To any location between adjacent main transverse watertight bulkheads;

(2) To a main transverse watertight bulkhead spaced closer than the longitudinal extent of collision penetration specified in Table 93.60–20 from another main transverse watertight bulkhead; and

(3) To a main transverse watertight bulkhead or a transverse watertight bulkhead bounding a side tank or double bottom tank if there is a step or a recess in the transverse bulkhead that is longer than 3.05 meters and that is located within the extent of penetration of assumed damage. The step formed by

the after peak bulkhead and after peak tank top is not a step for the purpose of this regulation.

§ 93.60–20 Extent of damage.

For the purpose of the calculations required in § 93.60–10—

(a) Design calculations must include both side and bottom damage, applied separately; and

(b) Damage must consist of the penetrations having the dimensions given in Table 93.60–20 except that, if the most disabling penetrations would be less than the penetrations described in this paragraph, the smaller penetration must be assumed.

§ 93.60–25 Permeability of spaces.

When doing the calculations required in § 93.60–10—

(a) The permeability of a floodable space, other than a machinery or cargo space, must be as listed in Table 93.60–25;

(b) Calculations in which a machinery space is treated as a floodable space must be based on an assumed machinery space permeability of 85%, unless the use of an assumed permeability of less than 85% is justified in detail; and

(c) Calculations in which a cargo space, that is normally filled in the full load condtions, is treated as a floodable space must be based on an assumed cargo space permeability of 60%, unless the use of an assumed permeability of less than 60% is justified in detail. If the cargo space is not normally filled in the full load condition, a permeability of 95% must be assumed.

§ 93.60–30 Survival conditions.

A vessel is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

(a) *Final waterline.* The final waterline, in the final condition of sinkage, heel, and trim, must be below the lower edge of an opening through which progressive flooding may take place, such as an air pipe, or an opening that is closed by means of a weathertight door or hatch cover. This opening does not include an opening closed by a—

(1) Watertight manhole cover;

(2) Flush scuttle;

(3) Small watertight cargo tank hatch cover that maintains the high integrity of the deck;

(4) Class 1 door in a watertight bulkhead within the superstructure;

(5) Remotely operated sliding watertight door; or

(6) Side scuttle of the non-opening type.

(b) *Heel angle.* The maximum angle of heel must not exceed 15 degrees, except that this angle may be increased to 17 degrees if no deck edge immersion occurs.

(c) *Range of stability.* Through an angle of 20 degrees beyond its position of equilibrium after flooding, a vessel must meet the following conditions:

(1) The righting arm curve must be positive.

(2) The maximum righting arm must be at least 10 cm.

(3) Each submerged opening must be weathertight.

(d) *Metacentric height.* After flooding, the metacentric height must be at least 50 mm when the vessel is in the upright position.

(e) *Progressive flooding.* Pipes, ducts or tunnels within the assumed extent of damage must be either—

(1) Equipped with arrangements such as stop check valves to prevent progressive flooding to other spaces with which they connect; or

(2) Assumed in the design calculations required in § 93.60–10 to permit progressive flooding to the spaces with which they connect.

TABLE 93.60–20.—*Extent of Damage*

Collision Penetration	
Longitudinal extent	(⅓)L⅓ or 14.5m whichever is shorter.
Transverse extent [1]	B/5 or 11.5m whichever is shorter.
Vertical extent	From the baseline upward without limit.
Grounding Penetration at the Forward End But Excluding Any Damage Aft of a Point 0.3L Aft of the Forward Perpendicular	
Longitudinal	(⅓)L⅓ or 14.5m whichever is shorter.
Transverse	B/6 or 10 m whichever is shorter but not less than 5m.
Vertical extent from the baseline.	B/15 or 6 m whichever is shorter.
Grounding Penetration At Any Other Longitudinal Position	
Longitudinal	L/10 or 5 m whichever is shorter.
Transverse	5 m
Vertical extent from the baseline.	B/15 or 6 m whichever is shorter.

[1] Damage applied inboard from the vessel's side at right angles to the centerline at the level of the summer load line assigned under Subchapter E of this chapter.

TABLE 93.60–25.—PERMEABILITY

Spaces and tanks	Permeability (percent)
Storeroom spaces	60
Accommodation spaces	95
Voids	95
Consumable liquid tanks	[1]95 or 0
Other liquid tanks	[1]95 or 0

[1] Whichever results in the more disabling condition.
[2] If tanks are partially filled, the permeability must be determined from the actual density and amount of liquid carried.

Authority: R.S. 4405, as amended, 4462, as amended, sec. 6(b)(1), 80 Stat. 938; 46 U.S.C. 375, 416, 49 U.S.C. 1655(b); 49 CFR 1.46(b) (35 FR 4959). Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4488, as amended, 449C as amended, sec. 3, 24 Stat. 129, as amended, 41 Stat. 305, as amended, sec. 2, 45 Stat. 1943, as amended, sec. 2, 49 Stat. 888, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 68 Stat. 675; 46 U.S.C. 391, 392, 404, 481, 482, 483, 363, 85a, 88a, 367, 50 U.S.C. 198; E.O. 11239, July 31, 1965, 30 FR 9671, 3 CFR, 1965 Supp, unless otherwise noted.

Source: CGFR 65–50, 30 FR 16988, Dec. 30, 1965, unless otherwise noted.

Dated: February 17, 1983.

B. L. Stabile,

Vice Admiral, Coast Guard, Acting Commandant.

[FR Doc. 83–5048 Filed 2–25–83; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 24

Designated Ports for Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This document proposes to designate ports for the purpose of importing, exporting, and reexporting plants under the Endangered Species Act of 1973, as amended. It is necessary to designate ports for plants in order to implement provisions of the statute. This document also gives notice of a public hearing concerning the proposal.

DATES: Written comments concerning this proposed rule must be received on or before May 31, 1983. A public hearing concerning the proposal will be held at 10:00 a.m. on March 23, 1983.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered weekdays to the Division of Law Enforcement, U.S. Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C. 20005, between 7:45 a.m. and 4:15 p.m. Comments should bear the identifying notation REG 24–02–1. All materials received may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, N.W., Washington, D.C. The public hearing will be held in the North Penthouse (Room 8068) of the Main Interior Building, 18th and C Streets, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife

Service, Suite 300, 1375 K Street, NW., Washington, D.C. 20005, telephone (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Need for the Proposed Rulemaking

The Endangered Species Act of 1973, as amended, (referred to below as the Endangered Species Act) requires, among other things, that plants be imported, exported, or reexported only at designated ports or under certain limited circumstances at nondesignated ports. This document proposes to designate ports for the importation, exportation, or reexportation of plants.

Section 9(f) of the Endangered Species Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1) of the Endangered Species Act there is authority for the Secretary of the Interior to establish designated ports based on a finding that such action would facilitate enforcement and reduce costs of enforcement of the Endangered Species Act. In addition, under section 9(f)(2) of the Endangered Species Act, any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), and in effect on December 27, 1973, would be classified as a designated port until such time as the Secretary of the Interior otherwise prescribes. No ports were designated for plants under section 4(d) of the Act of December 5, 1969, and no ports have been designated for plants under section 9(f)(1) of the Endangered Species Act. This document proposes to designate ports for plants pursuant to sections 9(f)(1) and 11(f) (16 U.S.C. 1540(f)) of the Endangered Species Act.

With certain exceptions, the provisions of 50 CFR Parts 17 and 23 provide that endangered or threatened plants which are listed in 50 CFR 17.12 or 23.23 (referred to below as listed plants) may be imported, exported, or reexported only if, among other things, they are accompanied by certain documentation. It is necessary to conduct inspections to determine whether listed plants are accompanied by required documentation and to take any other necessary enforcement action. All plants, regardless of whether they are listed plants, are required to be imported, exported, or reexported only at designated ports or under limited circumstances at nondesignated ports. This was intended to assure that all plants moving through ports would be subject to an inspection system designed to recognize listed plants required to be accompanied by documentation.

Currently all listed plants are terrestrial plants. It is necessary for the U.S. Department of Agriculture (referred to below as USDA) to conduct the enforcement activities at ports with respect to terrestrial plants since USDA is responsible under section 3(15) of the Endangered Species Act (16 U.S.C. 1532(15)) for enforcement of provisions which pertain to the importation, exportation, or reexportation of terrestrial plants. In addition to terrestrial plants, there are marine plants, but none currently are listed plants. However, it appears that it is also necessary for USDA to conduct enforcement activities at ports with respect to marine plants in order to adequately conduct its enforcement responsibilities with respect to terrestrial plants. In particular, it appears necessary to conduct inspections of plants that are marine plants or are purported to be marine plants in order to lessen the chance that a listed terrestrial plant required to be accompanied by documentation would be moved through a port incorrectly identified as a marine plant.

USDA currently conducts an extensive enforcement program at many ports under the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) for the purpose of preventing the introduction into the United States of certain plant diseases, injurious insects, and other plant pests. This program involves inspections and other enforcement activities concerning all types of articles, including terrestrial plants and marine plants. In this connection, USDA has recommended that the establishment of designated ports for plants under the Endangered Species Act be cordinated with the list of ports currently utilized by USDA under the Federal Plant Pest Act and the Plant Quarantine Act. The recommendation of USDA, which is more fully explained below, is proposed to be adopted.

USDA has recommended that all of the following USDA ports be listed as designated ports for the importation, exportation, or reexportation of any plants, including any listed plants:

Nogales, Ariz.
Los Angeles, Calif.
San Diego, Calif.
San Francisco, Calif.
Miami, Fla.
Honolulu, Hawaii
New Orleans, La.
Hoboken, N.J. (Port of New York)
Jamaica, N.Y.
San Juan, P.R.
Brownsville, Tex.
El Paso, Tex.
Laredo, Tex.
Seattle, Wash.

In addition to recommending that the above-mentioned 14 ports be designated for the importation, exportation, and reexportation of any plants, USDA has also recommended that certain other ports be designated as ports for the importation, exportation, and reexportation of certain plants. Specifically, USDA has recommended that the USDA ports at Hilo, Hawaii and Chicago, Illinois be designated as ports for the importation, exportation or reexportation of listed plants of the family Orchidaceae (orchids) required to be accompanied by documentation under 50 CFR Part 17 or 23; that the USDA port at Milwaukee, Wisconsin be designated as a port for the importation, exportation, or reexportation of listed roots of *Panax quinquefolius* (American ginseng) required to be accompanied by documentation under 50 CFR Part 23; and that USDA ports at Detroit, Michigan; Buffalo, New York; Rouses Point, New York; and Blaine, Washington be designated as ports for the importation from Canada and for the exportation or reexportation to Canada of listed plants which are required to be accompanied by documentation under 50 CFR Part 17 or 23.

For enforcement of the Endangered Species Act, ports designated for listed plants should have adequate personnel with expertise in identification of listed plants, should have adequate facilities for holding plants, and should coincide, as much as possible, with established patterns of trade. Expertise in identification of listed plants would be necessary for determinations concerning whether plants without documentation are listed plants required to be accompanied by documentation, and for determinations concerning whether listed plants accompanied by documentation are accurately identified by such documentation. Also, it is necessary that designated ports for listed plants have adequate facilities for holding listed plants since such plants are subject to seizure if imported, exported, or reexported in violation of the Endangered Species Act. Further, such ports should coincide, as much as possible, with established patterns of trade in order to help reduce shipping costs. It appears that these proposed designations largely coincide with established patterns of trade. Also, based on consultations with USDA, it appears that the 14 USDA ports recommended by USDA to be listed as designated ports for the importation, exportation, or reexportation of any plants, are the only ports that would have adequate personnel and facilities available for such purposes for all plants on a regular basis; and that, with respect to endangered or threatened plants, the

USDA ports in Hilo, Hawaii, Chicago, Illinois, and Milwaukee, Wisconsin would have adequate personnel and facilities available on a regular basis only for the importation, exportation, and reexportation of certain plants as specified above. Further, with respect to plants, the USDA ports at Detroit, Michigan; Buffalo, New York; Rouses Point, New York; and Blaine, Washington are almost exclusively limited to trade between the United States and Canada, and these ports would have adequate personnel and facilities available on a regular basis only for the importation, exportation, or reexportation of plants moving between the United States and Canada.

USDA has made a further recommendation concerning the designation of ports. It was recommended that all USDA ports (these USDA ports are listed in paragraph (e) of the proposed text) and all U.S. Customs ports on the United States-Canada border (U.S. Customs designated ports of entry are listed in 19 CFR Part 101) be designated as ports for the importation, exportation, or reexportation of plants not required to be accompanied by documentation. For enforcement of the the Endangered Species Act, it is necessary that these ports have a program adequate for the identification and holding of listed plants misdirected to such ports. Based on consultations with USDA, it appears that personnel at these ports have sufficient expertise that would be utilized to identify those plants which could possibly be listed plants required to be accompanied by documentation, and would obtain any necessary assistance concerning the final identification of such plants from personnel at one of the 14 ports proposed to be designated for the importation, exportation, and reexportation of any plants.

Also, based on consultations with USDA, it appears that these ports have sufficient facilities that would be used for occasional holding of such plants or that personnel at such ports would arrange for any necessary holding of such plants.

For the reasons explained above, it appears that the USDA recommendations would facilitate enforcement of the Endanged Species Act. It appears that the USDA recommendations would also be cost efficient. In this connection, the Service has been advised by USDA that, to a significant extent, USDA would utilize the same personnel and facilities for enforcement activities under the Endangered Species Act that it utilizes for enforcement activities under the Federal Plant Pest Act and the Plant Quarantine Act.

Under the circumstances referred to above, the USDA recommendations are proposed by this document.

Also, a footnote has been added to explain that the ports referred to above are listed in local telephone directories.

It should further also be noted that regulations contained in 7 CFR Chapter III and promulgated under the Plant Quarantine Act, the Federal Plant Pest Act, and the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 *et seq.*) impose additional prohibitions and restrictions on the importation of plants. A footnote has been added to explain that such additional prohibitions and restrictions, including additional port of entry requirements, are contained in 7 CFR Chapter III.

National Environmental Policy Act

A draft environmental assessment has been preparted in conjunction with this proposal. It is on file in the Service's Division of Law Enforcement, 1375 K Street, NW., Suite 300, Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request. Comments on the draft environmental assessment should be mailed or delivered to the address given at the beginning of this proposal during the comment period on the proposed rule.

Notice of Public Hearing

Section 9(f)(1) of the Endangered Species Act requires that the public be given an opportunity to comment at a public hearing prior to the Secretary of the Interior's conferring designated port status on any port.

Accordingly, the Service has scheduled a public hearing for March 23, 1983 at 10:00 a.m. The hearing will be held in the North Penthouse (Room 8068) of the Main Interior Building, 18th and C Streets, NW., Washington, D.C.

All interested persons wishing to present oral or written testimony at this hearing must advise the Service of this desire before March 18, 1983. All such requests may be delivered weekdays to John T. Webb, U.S. fish and Wildlife Service, Division of Law Enforecement, 1375 K Street, N.W., Suite 300, Washington, D.C. Requests also may be mailed to: U.S. Fish and Wildlife Service, Division of Law Enforecment, P.O. Box 28006, Washington, D.C. 20005. Two (2) copies of the testimony should be submitted with each request.

Note.— The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. It appears that the proposed regulations would not cause a significant impact on the importation of plants because under regulations established by USDA (see 7 CFR Chapter III) almost all of such plants are already being imported in accordance with the proposed port requirements. Also, it appears that the proposed regulations would not cause a significant impact on the exportation or reexportation of plants because the ports proposed to be designated largely coincide with established patterns of trade for exports and reexports. Further, there is authority to allow the importation, exportation, or reexportation of plants at nondesignated ports in the interest of the health or safety of plants or for other reasons determined to be appropriate and consistent with the purpose of the Endangered Species Act. These determinations are discussed in more detail in a Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service. Finally, this rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C 3501 et seq.

List of Subjects in 50 CFR Part 24

Import, Export, Plants (agriculture).

Proposed Regulations

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, Code of Federal Regulations is proposed to be amended as follows:

1. The words "**RESERVED FOR MANAGEMENT AND ENFORCEMENT REGULATIONS**" are removed and a new Part 24 is added to read as follows:

PART 24—IMPORTATION AND EXPORTATION OF PLANTS [1]

Sec.

24.1 Designated ports.[2]

Authority: Sec. 9, Pub. L. 93-205, 87 Stat. 893 (16 U.S.C. 1538(f)).

§ 24.1 Designated ports.

(a) The following U.S. Department of Agriculture ports are designated ports for the importation, exportation, or reexportation of plants which are listed in 50 CFR 17.12 or 23.23 and which are required to be accompanied by

[1] USDA also administers the Plant Quarantine Act, as amended (7 U.S.C. 151 *et seq.*), the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), and the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 *et seq.*), which contain authority for additional prohibitions and restrictions, including additional port of entry requirements, on the importation of plants subject to this Part (see 7 CFR Chapter III for regulations containing prohibitions and restrictions under these authorities).

[2] The port specified in this section are listed in local telephone directories.

documentation under 50 CFR Part 17 or 23:

Nogales, Ariz.	Jamaica, N.Y.
Los Angeles, Calif.	San Juan, P.R.
San Diego, Calif.	Brownsville, Tex.
San Francisco, Calif.	El Paso, Tex.
Miami, Fla.	Laredo, Tex.
Honolulu, Hawaii	Seattle, Wash.
New Orleans, La.	
Hoboken, N.J. (Port of New York)	

(b) The U.S. Department of Agriculture ports at Hilo, Hawaii and Chicago, Illinois are designated ports for the importation, exportation, or reexportation of plants of the family Orchidaceae (orchids) which are listed in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR Part 17 or 23.

(c) The U.S. Department of Agriculture port at Milwaukee, Wisconsin is a designated port for the importation, exportation, or reexportation of roots of *Panax quinquefolius* (American ginseng) listed in 50 CFR 23.2 and which are required to be accompanied by documentation under 50 CFR Part 23.

(d) The U.S. Department of Agriculture ports at Detroit, Michigan; Buffalo, New York; Rouses Point, New York; and Blaine, Washington, are designated ports for the importation from Canada of plants which are listed in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR Part 17 or 23, and for the exportation or reexportation to Canada of plants which are listed in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR Part 17 or 23.

(e) All U.S. Customs designated ports of entry on the United States-Canada border (Customs designated Ports of entry are listed in 19 CFR Part 101) and the following U.S. Department of Agriculture ports are designated ports for the importation, exportation, or reexportation of plants not required to be accompanied by documentation under 50 CFR Part 17 or 23:

Mobile, Ala.	Wilmington, Del.
Anchorage, Alaska	Washington, District of Columbia
Nogales, Ariz.	Jacksonville, Fla.
Phoenix, Ariz.	Key West, Fla.
San Luis, Ariz.	Miami, Fla.
Tucson, Ariz.	Pensacola, Fla.
Calexico, Ariz.	Cape Canaveral, Fla.
Fairfield, Calif. (Travis AFB)	Port Everglades, Fla.
Los Angeles, Calif.	Tampa, Fla.
San Diego, Calif.	West Palm Beach, Fla.
San Francisco, Calif.	Atlanta, Ga.
San Pedro, Calif.	Savannah, Ga.
Denver, Colo.	Agana, Guam
Wallingford, Conn.	Hilo, Hawaii
Dover, Del. (Dover AFB)	Honolulu, Hawaii
Wailuku, Maui, Hawaii	San Juan, P.R.
Chicago, Ill.	Warwick, R.I.
Baton Rouge, La.	Charleston, S.C.
New Orleans, La.	Memphis, Tenn.
Bangor, Maine	Brownsville, Tex.
Portland, Maine	Corpus Christi, Tex.
Baltimore, Md.	Dallas-Fort Worth, Tex.
Boston, Mass.	Del Rio, Tex.
Detroit, Mich.	Eagle Pass, Tex.
Duluth, Minn.	El Paso, Tex.
St. Paul, Minn.	Galveston, Tex.
Kansas City, Mo.	Hidalgo, Tex.
St. Louis, Mo.	Houston, Tex.
Hoboken, N.J.	Laredo, Tex.
McGuire AFB, N.J.	Port Arthur, Tex.
Albany, N.Y.	Presidio, Tex.
Buffalo, N.Y.	Progreso, Tex.
New York, N.Y.	Roma, Tex.
Jamaica, N.Y.	San Antonio, Tex.
Rouses Point, N.Y.	St. Thomas, Virgin Islands of the United States
Morehead City, N.C.	
Wilmington, N.C.	
Cleveland, Ohio	St. Croix, Virgin Islands of the United States
Astoria, Oreg.	
Coos Bay, Oreg.	Newport News, Va.
Portland, Oreg.	Norfolk, Va.
Philadelphia, Pa.	Blaine, Wash.
Mayaguez, P.R.	Tacoma, Wash. (McChord AFB)
Ponce, P.R.	
Hato Rey, P.R.	Seattle, Wash.
Roosevelt Roads, P.R.	Milwaukee, Wis.

Dated: November 1, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-5012 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 40
Monday, February 28, 1983

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.

CIVIL AERONAUTICS BOARD

[Docket 41244]

First American Bank of Virginia; Enforcement Proceeding; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on March 8, 1983, at 9:30 a.m. (local time), Room 1027, Main Universal Building, 1825 Connecticut Ave. NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., February 22, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-5015 Filed 2-25-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41095]

Air Washington, Inc.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled proceeding is assigned to be held on March 10, 1983, at 9:30 a.m. (local time), room 1027, Main Universal Building, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., February 22, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-5016 Filed 2-25-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41095]

Air Washington, Inc.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated at Washington, D.C., February 22, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-5017 Filed 2-25-83; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations; week ended February 18, 1983.

Subpart Q of Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Feb. 15, 1983	41288	Continental Air Lines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Washington, D. C. 20036. Petition and Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's procedural Regulations requests a certificate of public convenience and necessity so as to authorize service between coterminal points Houston/Dallas/Ft. Worth, Texas to the intermediate points Fairbanks and Anchorage, Alaska. This represents United States Route D.1 in the U.S.-Canada Air Transport Agreement. Western Air Lines, Inc. currently operates over this route, but Continental requests that the Board revoke Western's experimental certificate under Section 401(d)(8) of the Act for its failure to provide either the service it proposed when it was awarded the route or that needed to properly develop the route, and replace Western with Continental over the route. In the alternative, Continental requests back-up authority if it is not awarded primary authority over the route. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 15, 1983.
Do	41289	Transamerica Airlines, Inc., c/o Walter D. Hansan, Burwell, Hanson, Manley & Peters, 1706 New Hampshire Avenue, N.W., Washington, D. C. 20009. Application of Transamerica Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests renewal of its experimental (back-up) Baltimore-London certificate issued to Transamerica through Order 82-8-32 which certificate is to expire pursuant to its terms on August 17, 1983, if it has not become effective before that date. This application requests that the term of the renewed Baltimore-London back-up certificate granted to Transamerica be coextensive with the primary carrier's authority, that is, April 1, 1986. Conforming Applications, Motions to Modify Scope, and Answers may be filed by March 15, 1983.
Feb. 16, 1983	41166	Orion Lift Service, Inc. d/b/a Orion Air, c/o Stephan L. Gelband, Hewes, Morrella, Gelband & Lamberton, 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007. Supplement to the Application of Orion Lift Service, Inc. d/b/a Orion Air with respect to Order 83-1-35 which requested additional information concerning its present and proposed operations in order to facilitate further action pursuant to Subpart Q of the Board's Procedural Regulations. Answers may be filed by March 16, 1983.
Feb. 17, 1983	41293	Independent Air Incorporated, H. Shepherd Lippincott, 2009 N. Fourteenth Street, Suite 708, Arlington, Virginia 22201. Application of Independent Air Incorporated, pursuant to Section 401(d)(3) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to provide foreign charter air transportation of persons, property and mail, as follows:

Date filed	Docket No.	Description
		(a) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and Canada, on the other; (b) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and Mexico, on the other; (c) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea, on the other hand; (d) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand; (e) Between any point in any State of the United States or in the District of Columbia, or any territory or possession of the United States, on the one hand, and American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand; (f) Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand; (g) In foreign air transportation, pursuant to contracts with the Department of Defense. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 17, 1983.
Feb. 18, 1983	41297	The Flying Tiger Line Inc., c/o Joel Stephen Burton, Ginsburg, Feldman, Weil and Bress, 1700 Pennsylvania Avenue, N.W., Suite 300, Washington, D. C. 20006. Application of The Flying Tiger Line Inc., pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority to provide foreign air transportation of property and mail; Between a point or points in the United States on the one hand and points in Australia on the other hand. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 18, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-5014 Filed 2-25-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; California State University et al.

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 Part 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 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83–31. Applicant: California State University, Northridge, 18111 Nordhoff Street, Northridge, CA 91330. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 53760 in the **Federal Register** of November 29, 1982. Instrument ordered: July 12, 1982.

Docket No. 83–33. Applicant: The Johns Hopkins Oncology Center, 600 North Wolfe Street, Baltimore, Maryland 21205. Instrument: Electron Microscope, EM–410. Manufacturer: N.V. Philips, The Netherlands. Intended use of instrument: See Notice on page 53083 in the **Federal Register** of November 24, 1982. Application received by Commissioner of Customs: October 20, 1982.

Docket No. 83–42. Applicant: University of Pennsylvania, School of Medicine, 36th and Hamilton Walk, Philadelphia, PA 19104. Applicant: Electron Microscope, Model H–600–3 and Accessories. Manufacturer: Hitachi Scientific Instrument, Japan. Intended use of instrument: See Notice on page 55987 in the **Federal Register** of December 14, 1982. Instrument ordered: May 17, 1982.

Docket No. 83–44. Applicant: The University of Texas at Austin, Engineering Science Building, Room 403, Austin, Texas 78712. Instrument: Electron Microscope, JEM–1200 EX with Accessories. Manufacturer: JEOL Limited, Japan. Intended use of instrument: See Notice on page 54998 in the **Federal Register** of December 7, 1982. Instrument ordered: August 23, 1982.

Docket No. 83–45. Applicant: National Hansen's Disease Center, Carville, LA 70721. Instrument: Electron Microscope, Model EM 410. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use of instrument: See Notice on page 56533 in the **Federal Register** of December 17, 1982. Instrument ordered: September 20, 1982.

Docket No. 82–00083R. Applicant: Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburgh, PA 15224. Instrument: Electron Microscope, Model EM 109 and Accessories. Application is a resubmission, notice of which was published in the **Federal Register** of February 16, 1982. Instrument ordered: December 8, 1981.

(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. 83-4933 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments; Stanford University, et al.

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 98–651; 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States. Comments must be filed in accordance with Subsections 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date

on which this notice of application is published in the **Federal Register**.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, Room 1523, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00267R. Applicant: Stanford University, 851 Welch Road, Stanford CA 94305. Instrument: Excimer Laser TE-861T with Standard Electrodes and Model 525 Capacitor and Accessories. Application is a resubmission, notice of which was published in the **Federal Register** of September 8, 1982.

Docket No. 82-00279R. Applicant: Rensselaer Polytechnic Institute, 110-Eighth Street, Troy, NY 12181. Instrument: Excimer-Multi-Gas Laser EMG I01/95. Application is a resubmission, notice of which was published in the **Federal Register** of August 23, 1982.

Docket No. 83-132. Applicant: University of North Carolina School of Medicine, Department of Anatomy, 108 Swing Building 217H, Chapel Hill, NC 27514. Instrument: Electron Microscope, JEM 200-CX SEG. Manufacturer: JEOL, Japan. Intended use of instrument: The instrument is intended to be used for the following research projects: (1) High resolution assessment of the distribution of specific integral catalytic proteins in biomembranes, (2) distribution of antigenic determinants in sperm plasma membrane during fertilization, (3) *in vitro* and *in vivo* studies of membrane cytoskeletal associations, (4) ultrahigh resolution studies of two-dimensional membrane protein crystals, (5) electron microscopy of the centriole, ciliation and microtubule initiation cycles with the "S" phase of cultured mammalian cells and ultrastructure of the responsible molecular components of the cytoskeleton, (6) three-dimensional ultrastructural associations of neurons and synapses in the feline dorsal column nuclei, and (7) interactions between serotonergic (5-HT) neuroblasts and dividing germinal cells in the neuroepithelium of the rat embryo, and (8) growth control in the external granular layer of the developing cerebellum. The article will also be used in the training and education of the proper use of electron microscope instrumentation. Application received by Commissioner of Customs: February 3, 1983.

Docket No. 83-134. Applicant: Indiana University-Purdue University at Indianapolis, 630 West New York Street, Indianapolis, IN 46202. Manufacturer: Nuclex Glos Scanditronix, Sweden. Intended use of instrument: The instrument is intended to be used for studies of cancer patients; responses of their disease to radiation therapy alone and in combination with surgery and chemotherapy to find more effective cancer management techniques. In addition, the instrument will be used in the Radiation Oncology Resident Training Program, and Radiation Therapy Technologist Training Program to prepare physicians for medical speciality board certification and practice as Radiation Oncolgists; and to prepare technologists for board registration and practice as Radiation Therapy Technologists. Application received by Commissioner of Customs: February 9, 1983.

Docket No. 82-00286R. Applicant: San Diego State University Foundation, 5178 College Avenue, San Diego, CA 92182-1900. Instrument: Excimer Laser, Model TE-861S and Accessories. Application is a resubmission, notice of which was published in the **Federal Register** of September 8, 1982.

Docket No. 82-00356. Applicant: Children's Hospital of Pittsburgh, 125 DeSoto Street, Pittsburgh, PA 15213. Instrument: Automatic Discrete Selective Chemistry Analyzer. Manufacturer: Greiner Electronics, United Kingdom. Intended use of instrument: The Article is intended to be used for biochemical analysis of body fluids such as blood, urine, etc. to aid in patient diagnosis. Educational uses will include training of medical technologists and pathology residents. Application received by Commissioner of Customs: September 20, 1982.

(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. 83-4934 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigation; Carbon Steel Plate From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation, carbon steel plate from Brazil.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether carbon steel plate from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before March 17, 1983, and we will make ours on or before July 11, 1983.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3963.

SUPPLEMENTARY INFORMATION:

The Petition

On January 31, 1983, we received a petition from counsel for Bethlehem Steel Corporation on behalf of the domestic carbon steel plate products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring a United States industry. The allegation of sales at less than fair value is supported by 1981 home market and United States pricing information derived from the Government of Brazil's public response concerning the recent countervailing duty investigation on carbon steel plate from Brazil.

The allegation of sales at less than fair value is also supported by comparisons of the estimated cost of production for carbon steel plate in Brazil in 1982 (derived from the Trigger Price Mechanism Manual and updated to reflect changes in the wholesale price index in Brazil and exchange rates between the Brazilian Cruzeiro and the U.S. dollar), with the 1982 average f.a.s. Brazilian port value of carbon steel plate imported into the United States (as provided by U.S. Department of Commerce statistics).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner

supporting the allegations. We have examined the petition on carbon steel plate and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether carbon steel plate from Brazil is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by July 11, 1983.

Scope of the Investigation

The merchandise covered by this investigation is carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615 and 607.9400 of the *Tariff Schedules of the United States Annotated* (TSUSA); and hot-rolled carbon steel plate which has been coated or plated with metal including any material which has been painted or otherwise covered after having been coated or plated with metal, as currently provided for in items 608.0710 and 608.1100 of the TSUSA. Semifinished products of solid rectangular cross sections with a width at least four times the thickness in the cast condition or processed only through primary mill hot rolling are not included.

Carbon steel plate is used in the construction of bridges, mining equipment, pressure vessels, railroad freight and passenger cars, ships, line pipe, industrial machinery, machine parts, and a large variety of other products.

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 17, 1983, whether there is a reasonable indication that imports of carbon steel plate from Brazil are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 22, 1983.

Gary N. Horlick

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5035 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Antidumping Investigation; Hot-Rolled Carbon Steel Sheet From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation, hot-rolled carbon steel sheet from Brazil.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether hot-rolled carbon steel sheet from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before March 17, 1983, and we will make ours on or before July 11, 1983.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3963.

SUPPLEMENTARY INFORMATION:

The Petition

On January 31, 1983, we received a petition from counsel for Bethelem Steel Corporation on behalf of the domestic carbon steel sheet products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act), and that these imports are materially injuring a United States industry. The allegation of sales at less than fair value is supported by comparisons of the estimated cost of production for hot-rolled carbon steel sheet in Brazil in 1982 (derived from the Trigger Price Mechanism Manual and updated to reflect changes in the wholesale price index in Brazil and exchange rates between the Brazilian Cruzeiro and the U.S. dollar), with the 1982 average f.a.s. Brazilian port value of hot-rolled carbon steel sheet imported into the United States (as provided by U.S. Department of Commerce statistics).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether hot-rolled carbon steel sheet from Brazil is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by July 11, 1983.

Scope of the Investigation

The merchandise covered by this investigation is hot-rolled carbon steel sheet. The term "hot-rolled carbon steel sheet" covers hot-rolled carbon steel products, whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches in width and over 0.1875 inch in thickness and in coils, as currently provided for in item 607.6610 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Hot-rolled carbon steel sheet is used in the construction of automobiles, industrial machinery and products, pipe, and a large variety of other products.

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such

information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 17, 1983, whether there is a reasonable indication that imports of hot-rolled carbon steel sheet from Brazil are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 22, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5036 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Postponement of Final Determination; Tool Steel From the Federal Republic of Germany

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of postponement of final determination.

SUBJECT: The Department of Commerce hereby extends the period for its final determination with respect to the antidumping investigation of tool steel from the Federal Republic of Germany (FRG). The final determination will be made no later than May 27, 1983.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; (202) 377-5288.

SUPPLEMENTARY INFORMATION: On January 5, 1983, the Department of Commerce determined preliminarily that tool steel from FRG was being sold, or was likely to be sold, at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act). We announced our determination in the Federal Register on January 12, 1983 (48 FR 1334).

An exporter who accounted for a significant proportion of exports of the merchandise which is the subject of this investigation requested that the Department extend the period for final determination. This request is in accordance with section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)).

Accordingly, the period for determination in this case is hereby postponed. Final determination will be made not later than May 27, 1983.

Dated: February 10, 1983.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5034 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Final Results of Administrative Review of Countervailing Duty Order; Amoxicillin Trihydrate and Its Salts From Spain

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On December 23, 1982, the Department of Commerce published in the Federal Register the preliminary results of its administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain. The review covered the period January 1, 1981 through December 31, 1981. The notice stated that the Department had preliminarily determined the net subsidy to be 1.28 percent *ad valorem*.

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as those presented in the preljminary results.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Laura K. Kneale or Joseph A. Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 57317) the preliminary results of its administrative review of the countervailing duty order on amoxicillin trihydrate and its salts from Spain (44 FR 44154, July 27, 1979). The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by the review is amoxicillin trihydrate and its salts ("amoxicillin"), an antibiotic which is a semi-synthetic penicillin, imported directly or indirectly from Spain. Such imports are currently classifiable under item 411.7400 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981, and the following programs: (1) A rebate upon exportation of indirect taxes, under the Desgravacion Fiscal a la Exportacion; and (2) an operating capital loans program. The only known exporter of this merchandise to the United States is Antibioticos, S.A.

Final Results of the Review

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as those presented in the notice of preliminary results of review.

The Department will instruct the Customs Service to assess countervailing duties in the amount of the net subsidy, 1.28 percent of the f.o.b. invoice price, on all shipments of amoxicillin trihydrate and its salts from Spain exported on or after January 1, 1981 and on or before December 31, 1981.

Further, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 1.16 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department intends to conduct the next administrative review by the end of August 1983. The amount of countervailing duties to be imposed on exports made during 1982 will be determined in that review. Consequently, the suspension of liquidation previously ordered will continue for all entries of this merchandise exported on or after January 1, 1982.

The Department encourages interested parties to review this public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 22, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5039 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Final Results of Administrative Review of Countervailing Duty Order; Ampicillin Trihydrate and Its Salts From Spain

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On December 23, 1982, the Department of Commerce published in the **Federal Register** the preliminary results of its administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain. The review covered the period January 1, 1981 through December 31, 1981. The notice stated that the Department has preliminarily determined the net subsidy to be 1.73 percent *ad valorem*.

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as those presented in the preliminary results.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Laura K. Kneale or Joseph A. Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 1982, The Department of Commerce ("the Department") published in the **Federal Register** (47 FR 57318) the preliminary results of its administrative review of the countervailing duty order on ampicillin trihydrate and its salts from Spain (44 FR 17484, March 22, 1979). The Department has now completed that administrative review.

Scope of the Review

The merchandise covered by the review is ampicillin trihydrate and its salts ("ampicillin"), an antibiotic which is a semi-synthetic penicillin, imported directly or indirectly from Spain. Such imports are currently classifiable under item 411.6000 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981, and the following programs: (1) A rebate upon exportation of indirect taxes, under the Desgravacion Fiscal a la Exportacion; and (2) an operating capital loans program. The only known exporter of this merchandise to the United States is Antibioticos, S.A.

Final Results of the Review

Interested parties were invited to comment on our preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as those presented in the notice of preliminary results of review.

The Department will instruct the Customs Service to assess countervailing duties in the amount of the net subsidy, 1.73 percent of the f.o.b. invoice price, on all shipments of ampicillin trihydrate and its salts from Spain exported on or after January 1, 1981 and on or before December 31, 1981.

Further, as provided for by section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act"), the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of 1.57 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department intends to conduct the next administrative review by the end of August 1983. The amount of countervailing duties to be imposed on exports made during 1982 will be determined in that review. Consequently the suspension of liquidation previously ordered will continue for all entries of this merchandise exported on or after January 1, 1982.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: February 22, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5032 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Receipt of Application for Permit; Southwest Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant: Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research to enhance the propagation and survival of the species.

3. Species: Hawaiian mink seal (Monachus schauinslandi).

4. Location: Northwestern Hawaiian Islands.

5. Period of Activity: 5 years.

6. Summary of Request: The applicant is requesting a permit to take Hawaiian monk seals for the following research/recovery purposes:

I. To investigate monk seal mass mortality in the event of an incident of increased mortality at any location, up to the following may be taken:

10 moribund seals by sacrifice;
20 sick seals by marking and specimen collection;
10 healthy seals by specimen collection;
6 healthy male seals by sacrifice;
10 sick seals by experimental treatment, and
100 sick seals by treatment, if experimental treatment is successful.

II. To monitor and enhance pup survival at Kure Atoll, up to the following may be taken:

6 weaned female pups per year by temporary maintenance.
8 weaned pups per year by tagging and marking.

III. To investigate the behavior of adult males that may be responsible for pup mortality, up to 20 adult males may be taken by tagging.

IV. To investigate age-specific surivorship, differential mortality which

may contribute to imbalanced sex ratios and geographic difference in survivorship, up to 100 pups per year may be taken by tagging at any location except French Frigate Shoals and Kure Atoll.

V. For captive experimental studies including feeding, disease treatments, testing of marking techniques and tranquilizer drugs, up to 3 juvenile males may be collected at Laysan Island, Lisianski Island, and/or French Frigate Shoals and maintained in captivity.

VI. For population assessment studies, up to 805 seals, other than pups, may be marked at Kure Atoll, Pearl and Hermes Reef, Lisianski, Laysan, Necker and Nihoa Islands; and up to 125 weaned pups may be marked at French Frigate Shoals. This part of the request will be conducted over a two-year period, but activities will be limited to one-year at any one location.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: February 22, 1983.

Richard B. Roe,

Acting Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 83-5040 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-22-M

Emergency Striped Bass Study; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96–118).

DATE: The meeting will convene on Friday, March 25, 1983, at 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public, however, space is limited.

ADDRESS: National Marine Fisheries Service, Room 401, Page Building #2, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Constituency Affairs Staff, National Marine Fisheries Service, Washington, D.C. 20235, telephone (202) 254–5536.

Dated: February 22, 1983.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-5039 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council's Red Drum Advisory Subpanel and Standing Scientific and Statistical Committee and Special Red Drum Scientific and Statistical Committee; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The Gulf of Mexico Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a standing Scientific and Statistical Committee (SSC), a special red drum SSC, and a red drum subpanel of its Advisory Panel (AP). The red drum AP will meet to review an informational profile on the red drum fishery; the SSC will meet to review the reporting requirements for the Shrimp and Spiny Lobster Fishery Management Plans and will also meet with the special red drum SSC to review an informational profile on the red drum fishery.

DATES: The public meeting of the red drum AP will convene on Tuesday, March 22, 1983, at approximately 8 a.m., and will adjourn at approximately 4:30 p.m. The SSC and special red drum SSC public meetings will convene on Wednesday, March 23, 1983, at approximately 8 a.m., and will adjourn at approximately 4:30 p.m.

ADDRESS: The public meetings will take place at the Barclay Airport Inn-Best Western, 5303 West Kennedy Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609, telephone (813) 228–2815.

Dated: February 23, 1983.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-5041 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), will meet to discuss joint ventures for fishing year 1983–84; discuss the Bluefish Fishery Management Plan (FMP) and the status of other FMP's, as well as discuss other fishery management and administrative matters.

DATES: The public meeting will convene on Wednesday, March 9, 1983, at approximately noon and will adjourn on Thursday, March 10, 1983, at approximately 5 p.m. The meeting may be lengthened or shortened depending upon progress on the agenda.

ADDRESS: The public meeting will take place at the Carousel Hotel, on the beach at 118th Street, Ocean City, Maryland.

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: February 23, 1983.

Joe P. Clem,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-5042 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending the Bilateral Wool and Man-Made Fiber Agreement With the Socialist Republic of Romania

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Amending the Bilateral Wool and Man-Made Fiber Textile Agreement with Romania to change the agreement year from April-March to a calendar year basis, beginning with the twelve-month period which began on January 1, 1983.

SUMMARY: On February 18, 1983 the Governments of the United States and the Socialist Republic of Romania exchanged notes further amending the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3,1980, as amended, to change the agreement year from April-March to a calendar year basis, beginning with the twelve-month period which began on January 1, 1983. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool and man-made fiber textile products in Categories 433/434, 435/444, 443, 635, 643/644, and 645/646, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1983, in excess of the designated levels of restraint.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Diana Bass, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 22, 1983.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes the directives of March 25, 1982 and February 16, 1983, which directed you to prohibit entry of certain specific categories of wool and man-made fiber textile products, produced or manufactured in Romania.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on February 28, 1983 and for the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories 433/434, 435/444, 443, 635, 643/644, and 645/646, produced or manufactured in Romania and exported during that twelve-month period, in excess of the following levels of restraint:

Category	12-Mo. level of restraint [1]
443/434	230,000 square yards equivalent.
435/444	7,037 dozen.
443	7,365 dozen.
635	41,162 dozen.
643/644	23,811 dozen.
654-646	201,802 dozen.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1982.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Romania, which have been exported to the United States on and after April 1, and extending through December 31, 1982, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels or restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania, which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; consultations may be held to adjust levels of restraint for categories not subject to specific limits; and (2) administrative arrangements or adjustments may be made to resolve problems arising under these provisions of the agreement. Any appropriate adjustments under the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of wool and man-made fiber textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-4935 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

Announcing Levels of Restraint for Certain Cotton and Man-Made Fiber Textile Products From Haiti

February 23, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported during the twelve-month period beginning on March 1, 1983.

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of April 2, 1982 between the Governments of the United States and Haiti establishes specific ceilings for Categories 337, 340, 347/348, and 349/649, among others, during the agreement year beginning on March 1, 1983. It also provides consultation levels for certain other categories which are not subject to the specific ceilings and which may be adjusted during the agreement year. In the letter following this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the

bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 340, 347/348, and 349/649, produced or manufactured in Haiti and exported during the twelve-month period which begins on March 1, 1983 and extends through February 29, 1984, in excess of the designated levels of restraint.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

EFFECTIVE DATE: March 1, 1983.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230; (202/377–4212).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

February 23, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of April 2, 1982 between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on March 1, 1983 and for the twelve-month period extending through February 29, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 340, 347/348, and 349/649, in excess of the following levels of restraint:

Category	12-month level of restraint (dozen)
337	112,203
340	176,550
347/348	374,500
349/649	1,496,000

In carrying out this directive, entries of textiles products in the foregoing categories, produced or manufactured in Haiti, which have been exported to the United States on and after March 1, 1982, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on March 1, 1982 and extends through February 28, 1983. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of April 2, 1982 between the Governments of the United States and Haiti which provide, in part, that: (1) Specific limits shall be increased by seven percent annually; (2) a specific ceiling may be exceeded in any agreement year by not more than seven percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent decrease in one or more specific limits; (3) specific limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (4) administrative agreements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-4877 Filed 2-25-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Closed Meeting Activity of the Energy Research Advisory Board

Correction

In FR Doc. 83–4653, appearing on page 7775, in the issue of Thursday, February 24, 1983 the heading should have read as printed above.

BILLING CODE 1505-01-M

Economic Regulatory Administration

Proposed Consent Order with Hudson and Hudson

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Hudson and Hudson. The Consent Order resolves all issues of Hudson and Hudson's compliance with the DOE Petroleum Price and Allocation Regulations with respect to crude oil sales for the period September 1973 through November 30, 1980. To remedy any violations that may have occurred during the period, Hudson and Hudson has agreed to make payment in the principal amount of $750,000.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

DATE: To be considered, comments must be received by 5:00 p.m. on March 30, 1983.

ADDRESS: Address comments to: Hudson and Hudson, Consent Order Comments, 324 East 11th Street, Kansas City, Missouri 64106–2466.

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106–2466, Phone: (816) 374–2092.

Copies of the Consent Order may be received free of charge by written request to: Hudson and Hudson, Consent Order Request, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106–2466.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E–190, Washington, D.C. 20585, between the hours of 8:00 a.m.—4:00 p.m.

SUPPLEMENTARY INFORMATION: Hudson and Hudson is a producer and marketer of crude oil and is subject to the jurisdiction o the OSC to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations) for the period covered by the Consent Order. An audit conducted by OSC of Hudson and Hudson included a review of Hudson and Hudson's records relating to its compliance with the Regulations during the period September 1973, through November 30, 1980. During the audit, questions and issues were raised and a Remedial Order was issued. *See Hudson and Hudson,* 9 DOE ¶ 83,044 (1982). This Consent Order resolves all administrative and civil issues between DOE and Hudson and Hudson not previously resolved concerning the sale of crude oil during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Hudson and Hudson's compliance with the applicable Regulations. OSC's audit reviewed Hudson and Hudson's pricing policies and procedures and the manner in which Hudson and Hudson applied the Regulations with respect to its production and sale of crude oil.

At the conclusion of the audit, OSC raised certain issues with respect to Hudson and Hudson's compliance with the Regulations. Notwithstanding DOE's position to the contrary, Hudson and Hudson maintains that it has correctly construed and applied the Regulations. The parties, however, desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Hudson and Hudson audit, and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Hudson and Hudson has agreed to make payment in the amount of $750,000, plus interest, to the DOE for deposit in a suitable account for subsequent disposition by DOE. Commencing with the first day of the first month following the effective date of this Consent Order, Hudson and Hudson shall pay the principal amount in twelve (12) equal monthly installments. Interest shall accrue on the unrefunded balance of the principal amount until the principal amount is paid in full.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties for any newly discovered regulatory violations committed by Hudson and Hudson, but only if Hudson and Hudson knowingly concealed such violations.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Hudson and Hudson has waived its right to administrative or judical appeal. The Consent Order does not constitute an admission by Hudson and Hudson or a finding by OSC of a violation of any Federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on March 30, 1983 will be considered by OSC before determining whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comment. If, after consideration of public comments, DOE determines to issue the Consent Order as a final order, the Consent Order will be made final and effective upon publication of a notice to that effect in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., February 15, 1983.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 83-4819 Filed 2-25-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-028]; FC Case No. 67045-9223-01-24]

Order Granting To Stanford University an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On November 2, 1982, the Leland Stanford Junior University, hereinafter referred to as petitioner, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act) that: (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981) and 47 FR 29209 (July 6, 1982). Criteria governing the cogeneration exemption are contained in 10 CFR 503.37.

The petitioner requested a permanent cogeneration exemption for a 42 megawatt (MW) gas-fired, with oil backup, combined cycle cogeneration facility producing electricity as well as the thermal energy required for steam and chilled water production for the Stanford, California, campus.

ERA has determined that the evidence available to it in the record of this proceeding is sufficient to support the issuance of the requested exemption. Therefore, pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby issues this Order granting a permanent cogeneration exemption for the new powerplant. The basis for ERA's Order is provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: In accordance with section 702(a) of FUA, this Order and its provisions shall take effect on April 29, 1983. The public file containing a copy of this Order and other documents and supporting materials on this proceeding is available for inspection upon request at: Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-093, 1000 Independence Avenue, SW., Washington, D.C. 20585, phone (202) 252-1316, or

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000

Independence Avenue, SW., Washington, D.C. 20585, phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The powerplant for which the petition for exemption was filed is a 42 megawatt gas-fired combined-cycle cogeneration facility, with oil backup. As it is expected that more than fifty percent of the net annual electric power generation of the cogeneration facility will be sold to Pacific Gas and Electric Company, it is therefore classified as an electric powerplant under FUA. The combined cycle cogeneration facility will consist of a 38 MW gas turbine generator, the exhaust of which is vented to a heat recovery boiler which will generate approximately 155,000 pounds/per hour of steam. In addition, a 4 MW high pressure steam turbine will be used for reducing the high pressure steam to 125 psig for delivery to the campus steam header.

The petitioner certified that the gas or oil to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility where the calculation of savings is in accordance with 10 CFR 503.37(b); that the use of mixtures is not feasible, as required under 10 CFR 503.9; and that the criteria in 10 CFR 503.37(a)(1) are, therefore, satisfied by the powerplant.

Documentary evidence submitted by the petitioner in support of its petition under 10 CFR 503.37(a)(1) include: (1) The duly executed certifications required under that subparagraph; (2) exhibits containing the basis for the certifications, including the supporting factual and analytical materials; and (3) an environmental impact analysis, as required under 10 CFR 503.13(a).

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(b), ERA published its Notice of its Acceptance of Petition for Exemption and Availability of Certification relating to the powerplant in the Federal Register on December 8, 1982 (47 FR 55267), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the petition to the Environmental Protection Agency for comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on January 24, 1983. No comments were received and no hearing was requested.

Decision and Order: Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1) and, pursuant to section 212(c) of FUA, ERA hereby grants the petitioner a permanent cogeneration exemption for the new powerplant to be located at its Stanford, California, campus.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this Order may petition for judicial review thereof at any time before the 60th day following the publication of this Order in the Federal Register.

Issued in Washington, D.C., on February 22, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-5001 Filed 2-25-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-015; FC Case No. 55119-9207-01-12]

Proposed Rescission of an Order Granting a Permanent Fuels Mixture Exemption to General Motors Corporation, Assembly Division Plant, Lake Orion, Michigan

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: In response to a request from General Motors Corporation (GM), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), and 10 CFR Part 501, Subpart G, to rescind the permanent fuels mixture exemption granted by Order ("Order") to a major fuel burning installation (MFBI), identified as boiler No. 1, owned and operated by GM at its Assembly Division Plant, Lake Orion, Michigan.

Based upon its review of GM's rescission request, ERA is proposing to rescind 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 exemption. 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 **DATE** section, below). If no responses are received within this period, the Order rescission, as proposed, for boiler No. 1 shall become final upon the expiration of the period, without further action by ERA.

A detailed discussion of the Order and GM's request for rescission thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed rescission of the GM Order must be received by ERA no later than March 30, 1983.

ADDRESS: Written responses must 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. The case number, FC 55119-9207-01-12, 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, or

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: On September 14, 1981, ERA exempted by Order GM's boiler No. 1, located at Lake Orion, Michigan, 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 46376, September 18, 1981). Subject to the terms and conditions set forth in the Order, the permanent exemption permitted the use of a fuels mixture of coal and natural gas containing less than 25 percent natural gas in boiler No. 1. Boiler No. 1 is a natural gas-coal fired unit with a design heat input rate of approximately 80 MM Btu's per hour. GM's exemption petition was filed and granted under 10 CFR § 503.38(d) and Section 212(d) of FUA. Under the rules then in effect, a new boiler with a heat input rate of over 50 million Btu's per hour had to be aggregated with other boilers at the site and if the total heat input rate was 250 million Btu's or greater, the new boiler

was subject to the prohibitions of the Act.

GM requested that ERA rescind the Order on the basis of significantly changed circumstances resulting from DOE's revision of its final rules, published on December 7, 1981 at 46 FR 59872. Specifically, DOE therein deleted its aggregation tests, so that any facility below the 100 MM Btu's per hour threshold fuel heat input rate, like GM's boiler No. 1, would be excluded from the definition of MFBI, and from the prohibitions of the Act (10 CFR 500.2).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to rescind the Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, 59898, December 7, 1981). Based upon the information contained in GM's rescission request and upon the record as a whole, ERA proposes:

(1) To find that the revision of 10 CFR 500.2, so as to eliminate the rules governing the aggregation of facilities for jurisdictional purposes, as applied to GM's boiler No. 1 in Lake Orion, Michigan, constitutes significantly changed circumstances that warrant rescission of the Order, as provided by 10 CFR 501.102(b); and

(2) To rescind the Order.

Parties to the original Order proceeding are hereby notified of ERA's proposed rescission of the Order and of their right pursuant to 10 CFR 501.101(d) of file a response thereto within 30 days of the publication of this notice in the Federal Register. If ERA receives no responses within this period, the Order rescission shall become final as proposed, without further ERA action, upon expiration of the period.

Issued in Washington, D.C. Feburary 18, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-5000 Filed 2-5-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-016; FC Case No. 55119-9206-01-12]

Proposed Rescission of an Order Granting a Permanent Fuels Mixture Exemption to General Motors Corporation, Assembly Division Plant, Wentzville, Missouri

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: In response to a request from General Motors Corporation (GM), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has commenced a proceeding under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), and 10 CFR Part 501, Subpart G, to rescind the permanent fuels mixture exemption granted by Order ("Order") to a major fuel burning installation (MFBI), identified as boiler No. 1, owned and operated by GM at its Assembly Division Plant, Wentzville, Missouri.

Based upon its review of GM's rescission request, ERA is proposing to rescind 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 exemption. 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 **DATE** section, below). If no responses are received within this period, the Order rescission, as proposed, for boiler No. 1 shall become final upon the expiration of the period, without further action by ERA.

A detailed discussion of the Order and GM's request for rescission thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed rescission of the GM Order must be received by ERA no later than March 30, 1983.

ADDRESS: Written responses must be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, GA-093, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The case number, FC 55119-9206-01-12, 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, or

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-222, 1000 Independence Avenue, SW., Washington, D.C. 20585, telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: On September 14, 1981, ERA exempted by Order GM's boiler No. 1, located at Wentzville, Missouri, 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 46378, September 18, 1981). Subject to the terms and conditions set forth in the Order, the permanent exemption permitted the use of a fuels mixture of coal and natural gas containing less than 25 percent natural gas in boiler No. 1. Boiler No. 1 is a natural gas-coal fired unit with a design heat input rate of approximately 80 MM Btu's per hour. GM's exemption petition was filed and granted under 10 CFR 503.38(d) and Section 212(d) of FUA. Under the rules then in effect, a new boiler with a heat input rate of over 50 million Btu's per hour had to be aggregated with other boilers at the site and if the total heat input rate was 250 million Btu's or greater, the new boiler was subject to the prohibitions of the Act.

GM requested that ERA rescind the Order on the basis of significantly changed circumstances resulting from DOE's revision of its final rules, published on December 7, 1981 at 46 FR 59872. Specifically, DOE therein deleted its aggregation tests, so that any facility below the 100 MM Btu's per hour threshold fuel heat input rate, like GM's boiler No. 1, would be excluded from the definition of MFBI, and from the prohibitions of the Act (10 CFR 500.2).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to rescind the Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, 59898, December 7, 1981). Based upon the information contained in GM's rescission request and upon the record as a whole, ERA proposes:

(1) To find that the revision of 10 CFR 500.2, so as to eliminate the rules governing the aggregation of facilities for jurisdictional purposes, as applied to GM's boiler No. 1 in Wentzville, Missouri, constitutes significantly changed circumstances that warrant rescission of the Order, as provided by 10 CFR 501.102(b); and

(2) To rescind the Order.

Parties to the original Order proceeding are hereby notified of ERA's proposed rescission of the Order 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 this period, the Order rescission shall become final as proposed, without further ERA action, upon expiration of the period.

Issued in Washington, D.C., on February 18, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-4999 Filed 2-25-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF83-75-000]

Norman Barkema; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 22, 1983.

On November 29, 1982, Norman Barkema, (Applicant), RR#1, Alexander, Iowa, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The wind-generating facility is located at Applicant's residence in Alexander, Iowa. The electric power production capacity of the facility is 17.5 kilowatts. The Applicant does not own any other wind-generating small power production facilities located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4930 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6999-000]

Molly Breen; Exemption From Licensing

February 22, 1983.

A notice of exemption from licensing of a small hydroelectric project known as Soozie Hydro, Project No. 6999, was filed on January 13, 1983, by Molly Breen. The proposed hydroelectric project would have an installed capacity of 6.5 kW and would be located on an existing agricultural diversion of an unnamed stream within the Tahoe National Forest in Sierra County, California.

Pursuant to §§ 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in § 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of February 12, 1983.

Lawrence R. Anderson,

Director, Office of Electric Power Regulation.

[FR Doc. 83-4928 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI83-150-000]

Enerco, Inc.; Application of Calpetco V for Abandonment and for Waiver of Section 277.209(a) of the Commission's Regulations

February 18, 1983.

Take notice that on February 15, 1983, Calpetco V, by Peter W. Herbst, Herbst Exploration Inc., 2020 Island Drive, Monroe, Louisiana 71201, filed an application for abandonment pursuant to Section 7(b) of the Natural Gas Act and Section 157.30 of the Commission's regulations, and for waiver of Section 277.201, *et seq.*, of the Commission's regulations, pursuant to an agreement between Calpetco and Southern Natural Gas Company ("Southern") to abandon certain acreage in the Monroe Field, Louisiana. The gas produced by Calpetco V from this field is presently sold to Southern pursuant to four contracts. Calpetco V is the successor-in-interest to Enerco, Inc., which obtained the certificate in Docket No. CS77-299.

Calpetco V has entered into an agreement with Southern to terminate the sales to Southern from the Monroe Field. Under the existing contracts, Calpetco V must compress the gas to a minimum pressure of 500 psig, which consumes thirty to forty percent of the total gas produced. Calpetco V contends that this loss constitutes a wasteful use of gas reserves which are substantially depleted. Southern has executed a waiver of its rights under its contracts with Calpetco V, and its rights under Section 315(b) of the Natural Gas Policy Act of 1978 ("NGPA") and Section 277.201, *et seq.*, of the Commission's regulations. All of the gas sold to Southern pursuant to these contracts is classified as "stripper well gas" under Section 108 of the NGPA a portion of the gas also is classified as gas from a new, onshore production well under Section 103 of the NGPA. The remaining portion of the gas is dedicated to interstate commerce within the meaning of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission in the event no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4920 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5716-000]

Energenics Systems, Inc.; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Energenics Systems, Inc. (ESI), Permittee for the Newt Graham Lock and Dam, Project No. 5716 located on the Verdigris River in Wagoner County, Oklahoma has requested that its permit be terminated. The preliminary permit was issued on July 19, 1982, and would have expired on December 31, 1983.

ESI states that the lack of adequate head and flow at the site render the project infeasible.

ESI's request was dated January 19, 1983. The surrender of the permit for Project No. 5716 is accepted as of the date of issuance of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4922 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Projects Nos. 5628-001 and 6126-001]

Energenics Systems, Inc.; Surrender of Preliminary Permits

February 22, 1983.

Take notice that Energenics Systems, Inc., Permittee for the proposed Belle Fourche Dam Project No. 5628 and the proposed Ohio River Lock and Dam No. 53, Project No. 6126, has requested that its preliminary permits be terminated. The permit for Project No. 5628 was issued on August 25, 1982, and would have expired January 31, 1984. Project No. 5628 would have been located on the Belle Fourche River in Butte County, South Dakota. The permit for Project No. 6126 was issued on August 26, 1982, and would have expired January 31, 1984. Project No. 6126 would have been located on the Ohio River in Ballard County, Kentucky.

The Permittee filed its request on January 31, 1983, and the surrender of the preliminary permits for Projects Nos. 5628 and 6126 are deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4923 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5583-000]

Energenics Systems, Inc.; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Energenics Systems, Inc. (ESI), Permittee for the Cherry Creek Project No. 5583 located on Cherry Creek in Arapahoe County, Colorado has requested that its permit be terminated. The preliminary permit was issued on May 25, 1982, and would have expired on October 31, 1983.

ESI states that the lack of adequate head and flow at the site render the project infeasible.

ESI's request was dated January 19, 1983. The surrender of the permit for Project No. 5583 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary

[FR Doc. 83-4924 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5717-000]

Energenics Systems, Inc.; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Energenics Systems, Inc. (ESI), Permittee for the Chouteau Lock and Dam Project No. 5717 located on the Verdigris River in Wagoner County, Oklahoma has requested that its permit be terminated. The preliminary permit was issued on July 19, 1982, and would have expired on December 31, 1983.

ESI states that the lack of adequate head and flow at the site render the project infeasible.

ESI's request was dated January 19, 1983. The surrender of the permit for Project No. 5717 is accepted as of the date of issuance of this notice.

Kenneth F. Plumb,

Secretary

[FR Doc. 83-4925 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF81-2021-002 and E-9563-004]

Department of Energy; Bonneville Power Administration; Electric Rates, Federal; Order Approving Extension of Interim and Final Rates

Issued February 18, 1983.

On November 29, 1982, the Bonneville Power Administration (Bonneville) filed a request for an extension of interim approval of Bonneville's transmission rates in Docket No. EF81-2021-001 pending review of its request for final confirmation and approval of these rates by the Commission. The Commission's prior interim approval of Bonneville's transmission rate schedules FPT-2, UFT-2, ET-2, and IR-1[1] as recently extended for a limited period [2] will expire on February 28, 1983. Bonneville has requested that the Commission grant further interim approval of the transmission rate schedules until January 1, 1984. Bonneville also requests a similar extension of Set A and Set B of its General Transmission Rate Schedule Provisions, which are incorporated by reference into the four schedules.

Bonneville additionally requests that the Commission extend the effectiveness of its FPT-1, UFT-1, and ET-1 transmission rate schedules which were confirmed and approved on a final basis in Docket No. E-9563-000. 20 FERC ¶ 61,142.

In our "Order Confirming and Approving Transmission Rates" in that docket, the Commission granted final confirmation and approval of the FPT-1, UFT-1, and ET-1 rate schedules for the period June 10, 1977, through June 30, 1981. While the transmission rate schedules in Docket No. EF81-2021-000 were intended to supersede these rates, Bonneville states that some of its transmission contracts did not permit the rates to be collected. Bonneville therefore requests that the Commission extend the effectiveness of these rate schedules until January 1, 1984, with respect to those existing contracts under which the rates are presently being applied.

In support of its request for extension of Commission approval, Bonneville states that it is in the process of developing a comprehensive transmission policy which is intended to address numerous objectives that Bonneville seeks to achieve through its transmission services. Such objectives relate to wheeling services, the types of transmission services to be available, and the compensation methodology for transmission losses. Bonneville states that the requested extension will allow the final policy to be established prior to filing revised transmission rates. Bonneville does not expect to complete this policy study until late 1983, following public comment and hearing.

In further support of its request, Bonneville states that it needs the additional time in order to comply with the Commission's August 3, 1982 order in Docket No. E-9563-000. In that order, the Commission directed Bonneville to establish and maintain a separate accounting of costs, revenues, and deficits of the transmission system attributable to the Federal and non-

[1] Formula Power Transmission, Use-of-Facilities, Energy Transmission, and Integration of Resources, respectively.

[2] *See* "Order Extending Period For Comments and Extending Interim and Final Rates For A Limited Period of Time," 21 FERC ¶ 61,378 (December 30, 1982).

Federal wheeling customers, respectively. 20 FERC ¶ 61,142. The Commission also ordered Bonneville to file new rates with the Commission in its next transmission rate case to recover the deficits in revenues created from the shortfall in the transmission rates filed in Docket No. E-9563-000. *Id.* Bonneville states that it intends to develop revised rates in compliance with the Commission's order, but that it does not expect to complete this process until late 1983.

Finally, Bonneville states that it will notify the Commission of the specific date on which it will propose to adjust the transmission rates and will provide the Commission with a detailed schedule of the steps leading up to that adjustment date.[3] Bonneville will also advise the Commission in early 1983 as to what further steps are being taken to comply with the directives of the Commission's August 3, 1982 order.

Our December 30, 1982 order in these dockets invited interested parties to submit comments to the Commission on or before January 14, 1983. On January 14, 1983, the Direct Service Industrial Customers (DSI's) filed a letter stating that the Commission, as a practical matter, must extend interim approval of BPA's transmission rates. They argue however, that BPA's transmission rates substantially under-recover the cost of serving non-Federal users of the transmission system in violation of both the Pacific Northwest Electric Power Planning and Conservation Act, and the Federal Columbia River Systems Transmission Act. The DSI's therefore request that the Commisssion's extension be conditioned to require that BPA establish new transmission rates when it sets 1983 power rates, and that the extension expire when such 1983 rates become effective.

Discussion

In our June 22, 1982 order granting an extension of Bonneville's rates in Docket Nos. EF81-2011-001 and EF81-202-001, we viewed a request by Bonneville for an extension of the transmission rates on an interim basis for up to five years as being unduly excessive. 19 FERC at 61,555. The Commission stated at that time that it believed that an extension of the interim rates until January 1, 1983, should be sufficient to enable Bonneville to file new interim rates, including new transmission rates. The Commission therefore could not find that good cause existed to grant an extension of time beyond January 1, 1983. Subsequent to that order, however, the Commission issued its order confirming and approving Bonneville's 1976 transmission rates which directed Bonneville to establish and maintain a specific method of accounting and to recover certain of the revenue deficits resulting from the 1976 transmission rates. In light of (1) Bonneville's attempt to comply with that order, (2) its statements that it will keep the Commission specifically advised as to the steps being taken in compliance with our order, and (3) the fact that no transmission rates will otherwise apply beyond February of this year (to the substantial detriment of the Federal treasury), we find that good cause exists to grant Bonneville's request for an extension of Commission approval. We expect that this extension will give Bonneville the opportunity to ensure that its revised transmission rates will be fully compensatory in accordance with Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839(e)(2) and will provide sufficient revenues to recover Bonneville's capital costs. This would include any deficit that may accrue from the transmission rates filed in Docket No. EF81-2021-000 under both the original period for which these rates were to be in effect *and* the period for which we are presently allowing the rates to be continued in effect on an extended basis. However, we agree with the DSI's that the extension should only be granted to the date that BPA places its new 1983 power rates into effect and that new transmission rates should also be placed into effect at that time.

The Commission orders:

(A) The Bonneville Power Administration's request for an extension of prior Commission approval of its transmission rates in Docket Nos. EF81-2021-000 and E-9563-000 is hereby granted until January 1, 1984 or until the 1983 power rates become effective, whichever is earlier.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4918 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[3] Consistent with the above statement, Bonneville, on January 31, 1983, filed a draft schedule of procedural dates leading up to a November 1, 1983 rate adjustment date for its 1983 wholesale power and transmission rates.

[Docket No. EF82-5051-000]

Department of Energy; Western Area Power Administration (Rio Grande Project); Electric Rate; Federal; Order Confirming and Approving Rates

Issued: February 18, 1983.

By letter filed on August 17, 1982, the Assistant Secretary of Energy for Conservation and Renewable Energy (AS/CE), on behalf of the Western Area Power Administration (WAPA), submitted a request for final confirmation and approval of rate schedule RGP-F1, to become effective for the billing period beginning September 1, 1982.[1] The rate schedule is applicable to the Plains Electric Generation and Transmission Cooperative and the City of Truth or Consequences, New Mexico, the only two customers purchasing power from the Rio Grande Project. The AS/CE has proposed that the rates be implemented in two phases[2] and states that annual revenues are expected to increase from $1,383,309 to $2,042,782 (48%). The average cost of wholesale firm power would increase from 16.03 mills/kwh to 27 mills/kwh.

The Rio grande Project was initially authorized as an irrigation project by Act of February 25, 1905 (Ch. 798, 33 Stat. 814). Previously, the project

[1] Pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation, under the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Rio Grande Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications (AS/RA) the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The Secretary delegated to this Commission the authority to confirm and approve on a final basis or to disapprove the rates developed by the AS/RA. Effective February 24, 1981, the Secretary transferred the power marketing responsibilities of the AS/RA to the AS/CE. By Rate Order WAPA-13, issued on August 12, 1982, the AS/CE confirmed and approved the new rate schedule on an interim basis.

[2] The two phased rate increase will be implemented as follows:

Effective date	Demand charge ($/kW-mo)	Energy charge (mills/kWh)
September 1, 1982	4.565	10.72
September 1, 1983	5.740	13.50

consisted of the (1) Elephant Butte Dam (completed in 1916), (2) Caballo Dam (a flood control and reregulating structure located down stream from Elephant Butte which was completed in 1938), and (3) the Elephant Butte Power Plant and a 115/kV transmission system constructed between 1938 and 1940). Additional transmission facilities were added between the years 1941 and 1952. Most of the transmission system has since been sold, so that now the Federal power system consists of the Hot Springs substation (its sale is currently under negotiation), the Elephant Butte switchyard, and the 24,300 kw Elephant Butte Power Plant.

During the first 10 years of operation (1941–1950), when the water supply was adequate, the project repaid $1,696,207 of the power investment and $1,004,662 representing interest on the investment. Beginning in 1951 and continuing to the present, the project incurred a repayment deficit primarily due to a continuing shortage of water supply for generation and the inability to raise rates above the competitive level of rates from other area power sources. From 1950, when the Project became "water short," until the mid 1960's (when WAPA's Colorado River Storage Project (CRSP) power became available for sale in New Mexico), generation had been confined to about eight months a year, February through September. However, as a result of the execution of joint Rio Grande Project and CRSP power sales contracts with the preference customers of the Rio Grande Project and backup agreements between the projects, CRSP now provides firming power to the Rio Grande Project during the summer season. The infusion of CRSP power has permitted the Rio Grande Project to sell 24MW of power at firm rates.[3]

Notice of the AS/CE's submittal in this docket was published in the **Federal Register** on August 30, 1982, with comments due on or before September 13, 1982. On September 20, 1982, the State Engineer of Wyoming (Wyoming) filed an untimely protest, stating that Wyoming did not receive notice of the filing until September 13, 1982. Although Wyoming has not petitioned to intervene, it challenges the use of a project repayment study based on WAPA's "Option A" marketing policy. Under Option A, it is assumed that CRSP power will continue to provide firming power to the Rio Grande Project. According to Wyoming, this option results in a subsidy to the Rio Grande Project, since CRSP must purchase higher cost power on the open market. Wyoming asserts that the effect of this subsidy is to reduce CRSP revenues credited for construction of future projects. As a result, Wyoming asserts that it prefers the adoption of an alternative set of assumptions based on an energy banking service for the Rio Grande Project.

Discussion

In exercising our delegated authority to confirm and approve Federal power marketing agency rates, the Commission must insure that such rates satisfy the standards established under the applicable power marketing statutes. Those statutes (including Section 9(c) of the Reclamation Act of 1939) require, *inter alia*, that rates be set at levels which provide sufficient revenues to recover operating costs and to repay the Federal investment within a reasonable time.

Our analysis of WAPA's proposed rates, the supporting materials (incuding the Rio Grande Project Power repayment study),[4] and the comments of Wyoming reveals that the level of revenues produced by the proposed rate is sufficient to recover the cost of producing and transmitting the power and energy, including the amortization of the capital investment over a reasonable period.[5]

Wyoming has demonstrated good cause to accept its late protest and its protest will be placed in the public file associated with the instant proceeding. (*See*, 18 CFR § 385.211). We note, however, that Wyoming's concerns about CRSP power subsidizing Rio Grande Project power were addressed by the AS/CE and rejected in Rate Order No. WAPA–13, issued on August 12, 1982. (See n.1, *supra*.) It is our belief that such matters relate to the proper allocation of power between projects and, as such, are beyond the scope of review required for confirmation and approval of the rates before us. In any event, in light of the existing contractual arrangements between the projects and the preference customers of the Rio Grande Project, the AS/CE appears to be relying on a power repayment study which reflects the expected performance, under the contracts. We therefore conclude that there is a rational basis for his decision.

Inasmuch as the Commission finds that the rates submitted by WAPA in this docket are consistent with the applicable statutory criteria, we shall confirm and approve those rates as requested for the billing period beginning September 1, 1982, through August 31, 1987.

The Commission orders:

(A) WAPA's rate schedule RGP–F1 is hereby confirmed and approved for the billing period beginning September 1, 1982, through August 31, 1987.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83–4819 Filed 2–25–83; 8:45 am]

BILLING CODE 6717–01–M

[3] Previously, the sale of Rio Grande Project firm power was limited to approximately 13MW.

[4] That study indicates that the rate setting point is FY 1990 when a major part of the original project power investment is scheduled to be repaid. Beyond this date, WAPA has assumed that the power rate would be reduced and that further reductions would be made after FY 2000 when the critical point for irrigation repayment is passed. WAPA states that the forecasted power rate reductions would be required to avoid the accumulation of surplus revenues while still meeting repayment requirements.

[5] We note that WAPA has failed to assess a half-year interest (approximate $30,000) on additions and replacements (for the first year of service for all additions and replacements made during the period of FY 1973 through 1980) as required by Department of Energy Order RA 6120.2, issued September 1979. Although the effect of such omission upon statutorily required revenue levels is minimal, the omission should be corrected in future filings.

[Docket No. ID–1414–000]

Robert F. Gilkeson; Electric Rates; Order Granting Application To Hold Interlock

Issued: February 18, 1983.

On August 30, 1982, Robert F. Gilkeson filed an application for Commission authorization to hold the positions of director of Philadelphia Electric Company (PECO) and trustee of Penn Mutual Life Insurance Company (Penn Mutual).[1] PECO is a public utility for purposes of section 305(b) of the Federal Power Act. Penn Mutual is an insurance company which, on July 30, 1982, acquired a fourth-tier, wholly-owned subsidiary, Janney Montgomery Scott, Inc. (Janney), a broker/dealer authorized by law to underwrite and market public utility securities.[2]

Notice of Mr. Gilkeson's application was published in the **Federal Register** with responses due on or before September 30, 1982. No comments were filed.

[1] Mr. Gilkeson has served as a director of PECO since 1962, and as a trustee of Penn Mutual since 1964. As discussed *infra*, he also held authorized interlocks between PECO and its three public utility subsidiaries from 1981–1982.

[2] Janney was acquired by Penn Mutual Equity Services, Inc., a wholly-owned subsidiary of Independence Square Properties, Inc., which in turn is a wholy-owned subsidiary of Penn Mutual.

Discussion

Section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (1976), prohibits persons from holding concurrent positions as officer or director[3] of both a public utility and a bank, trust company, banking association or firm authorized to underwrite or market public utility securities, unless the Commission authorizes the interlock upon a finding that neither public nor private interests will be adversely affected.[4]

According to the applicant, Penn Mutual does not underwrite or market public utility securities; neither its charter nor Pennsylvania insurance law allows it to do so.[5] Janney, however, has underwritten public utility securities, including those issued by PECO, although Mr. Gilkeson's application states that Janney has not underwritten or marketed any PECO securities since being acquired by Penn Mutual's subsidiary on July 30, 1982.

Because we consider Janney's securities underwriting activities attributable to Penn Mutual,[6] we must determine whether public or private interest will be adversely affected by Mr. Gilkeson's continued holding of the PECO-Penn Mutual interlock.

For the last 20 years, until June 28, 1982, Mr. Gilkeson held a series of authorized interlocks as officer and director of PECO and of its thee public utility subsidiaries, Philadelphia Electric Power Company, Susquehanna Power Company, and Susquehanna Electric Company.[7] He has served as Vice President, Director, President and Chairman of the Board of PECO and Vice President, president and Director of PECO's wholly owned subsidiaries. He has also been Chairman of the Executive Committee of PECO and continues to hold this position. We believe that Mr. Gilkeson's 20 year tenure as both officer and director of PECO and its utility subsidiaries and his continuing role as Chairman of the Executive Committee distinguishes him from previous applicants who were complete outsiders as to each company.[8] We also note that Mr. Gilkeson is a member of Penn Mutual's Operations Committee, Executive Committee and Nominating Committee, in addition to being a trustee. Without in any way intending to impugn the integrity, motives, or qualifications of Mr. Gilkeson, we are compelled to conclude that given his intimate involvement in the corporate affairs of the affected companies, Mr. Gilkeson's presence on the boards of both PECO and Penn Mutual could, without safeguards, create greater opportunities for undue influence, failures in arm's-length bargaining, or other potential improprieties than might exist where an applicant stands wholly outside each company. A further concern arises from the fact that Janney has, in the past, underwritten or marketed PECO securities. We are informed that in the month between the acquisition of Janney and the instant application, Janney participated in no such transactions, but there is no indication that such abstention would necessarily continue. Accordingly, we shall allow Mr. Gilkeson to hold the requested interlock, but only so long as Penn Mutual and its subsidiaries do not underwrite or participate in the marketing of PECO securities or the securities of its subsidiaries.[9] We conclude that, with this condition, neither public nor private interests will be adversely affected by authorizing Mr. Gilkeson to hold the interlock described herein.

The Commission orders:

(A) Until further order of the Commission, Robert F. Gilkeson's application to hold the interlock described herein is herby granted. Subject to the condition, as noted in the body of this order, that the authorization granted herein shall terminate if Penn Mutual Life Insurance Company or its subsidiaries underwrite or participate in the marketing of securities of Philadelphia Electric Company or its subsidiaries.

(B) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlock authorized by this order.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4917 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

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[3] We note that Mr. Gilkeson's position in Penn Mutual is that of a "trustee" rather than a "director." Although section 305(b) refers specifically to officers and directors, we consider the instant interlock to be squarely within the purview of section 305(b), for two reasons: (1) Penn Mutual's corporate management includes only officers and trustees, rather than officers and directors; and (2) Mr. Gilkeson's application recites that his duties as trustee are the usual duties associated with being a director. Gilkeson Application at 11.

[4] *See George F. Brewer,* 15 FERC ¶ 61,020 (1981). *Accord, Lelan F. Sillin, Jr.,* 33 F.P.C. 1006, 1007 (1965); *John Edward Aldred,* 2 F.P.C. 247, 260-65 (1940).

[5] Gilkeson Application at 16.

[6] We explained our views as to subsidiary/parent attribution in several recent proceedings. *See Frederick W. Mielke, Jr.,* 22 FERC ¶ 61,004 (1983); *Keith R. Potter,* 21 FERC ¶ 61,243 (1982); *William T. Coleman, Jr.,* 19 FERC ¶ 61,270 (1982); *Margery Somers Foster,* 19 FERC ¶ 61,146 (1982); *Edwin I. Hatch,* Opinion No. 87, Docket No. ID-1424 (November 6, 1979), *reh. denied, Edwin I. Hatch,* 17 FERC ¶ 61,132 (1980), *aff'd in part and rev'd and remanded in part,* 654 F. 2d 825 (D.C. Cir. 1981), *order on remand, Edwin I. Hatch,* 18 FERC ¶ 61,141 (1982).

[7] Mr. Gilkeson resigned from all of these positions except his PECO directorship on June 28, 1982. Penn Mutual's subsidiary acquired Janney on July 30, 1982, and on August 30, 1982 Mr. Gilkeson filed the instant application.

[8] *Alfred W. Eames, Jr.,* 22 FERC ¶ 61,005 (1982); *William T. Coleman, Jr.,* 21 FERC ¶ 61,242 (1982); *Keith R. Potter, supra* n. 6; *Margery Somers Foster, supra* n. 6.

[9] We imposed this same restriction in *Frederick W. Mielke, Jr.,* 22 FERC ¶ 61,004 (1983), where an interlocked company owned a registered broker-dealer subsidiary. As in that case, we do not intend to bar Mr. Gilkeson from holding this interlock if Penn Mutual or its subsidiaries and affiliates simply buy and sell securities in the so-called secondary securities market solely on behalf of investors who desire to buy or sell these securities of PECO or its subsidiaries and affiliates.

[Project No. 6152-001]

Grisdale Hill Co.; Surrender of Preliminary Permit

February 22, 1983.

Take notice that the Grisdale Hill Company, Permittee for the proposed Jackson Creek Project No. 6152, has requested that its preliminary permit be terminated. The Preliminary Permit was issued on June 30, 1982, and would have expired on June 30, 1984. The project would have been located on Jackson Creek in Douglas County, Oregon.

The Permittee filed its request on January 27, 1983, and the surrender of its permit for Project No. 6152 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4926 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST79-36-002]

Houston Pipe Line Co.; Extension Reports

February 22, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that

the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before March 11, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-36-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001.	United Gas Pipe Line Co	1/28/83	D	4/11/83
ST81-159-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston TX 77001.	Trunkline Gas Co	1/24/83	G	1/08/83
ST81-176-001	Michigan Wisconsin Pipe Line Co., One Woodward Avenue, Detroit, MI 48226.	Delhi Gas Pipeline Co	1/18/83	B	2/04/83
ST81-193-001	Somerset Gas Service, P.O. Box 989, Somerset, KY 42501.	Texas Eastern Transmission Corp	1/17/83	C	4/21/83
ST81-240-001	Louisiana Intrastate Gas Corp., P.O. Box 1352, Alexandria, LA 71301.	Tennessee Gas Pipeline Co	1/21/83	C	4/24/83
ST81-245-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	El Paso Natural Gas Co	1/20/83	G	4/20/83
ST81-250-001	Valero Transmission Co., P.O. Box 500, San Antonio, TX 78292.	United Gas Pipe Line Co	1/21/83	D	4/25/83
ST81-257-001	Northwest Pipeline Corp., P.O. Box 1526, Salt Lake City, UT 84110.	Northern Natural Gas Co	1/27/83	G	4/24/83
ST81-261-001	Channel Industries Gas Co., P.O. Box 2511, Houston, TX 77001.	Transcontinental Gas Pipe Line Corp	1/28/83	C	7/09/83
ST81-273-001	Northern Natural Gas Co., 2223 Dodge Street, Omaha, NE 68102.	Northwest Pipeline Corp	1/28/83	G	4/30/83
ST81-274-001	Coronado Transmission Co., P.O. Box 165, Corpus Christi, TX 78403.	Southern Natural Gas Co	1/19/83	C	4/09/83
ST81-276-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001.	Florida Gas Transmission Co	1/24/83	G	4/24/83
ST81-278-001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001.	Public Service Electric and Gas Co	1/28/83	C	5/01/83
ST81-279-001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001.	El Paso Natural Gas Co	1/17/83	C	4/20/83
ST81-280-001	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001.	El Paso Natural Gas Co	1/17/83	C	4/20/83
ST81-295-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001.	Natural Gas Pipeline Co. of America	1/31/83	G	5/19/83
ST81-396-001	East Texas Industrial Gas Co., P.O. Box 460, Marshall, TX 75670.	United Gas Pipe Line Co	1/31/83	D	4/22/83
ST81-442-001	Northwest Pipeline Corp	Colorado Interstate Gas Co	1/17/83	G	4/15/83
ST82-371-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	Northern Natural Gas Co	1/21/83	G	4/24/83
ST83-34-001	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001.	Louisiana Intrastate Gas Corp	1/24/83	B	6/30/83

[FR Doc. 83-4827 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4699-001]

Montana Department of Natural Resources and Conservation; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Montana Department of Natural Resources and Conservation, Permittee for the proposed Middle Creek Hydro Project No. 4699, has requested that its preliminary permit be terminated. The permit was issued on February 1, 1982, and would have expired on July 31, 1983. The project would have been located on Middle Creek in Gallatin County, Montana.

The Permittee filed its request on January 28, 1983, and the surrender of the preliminary permit for Project No. 4699 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4829 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5292-001]

Robert M. Moore; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Robert M. Moore, Permittee for the Moore Power Project, FERC No. 5292, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 5292 was issued on February 17, 1982, and would have expired on July 31, 1983. The

project would have been located on Halls Gulch in Trinity County, California.

The Permittee filed his request on January 18, 1983, and the surrender of the preliminary permit for Project No. 5292 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4931 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3385-002]

Carlton H. Noyes and John E. Phipps; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Carlton H. Noyes and John E. Phipps, Permittee for the proposed Oxbow Ranch Project No. 3385, has requested that its preliminary permit be terminated. The Preliminary Permit was issued on August 14, 1981, and would have expired on July 31, 1983. The project would have been located on Hawley, Ten Mile, and Clear Creeks in Lemhi County, Idaho.

The Permittee filed its request on January 28, 1983, and the surrender of its permit for Project No. 3385 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4921 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6122-001]

Timothy A. Ward; Surrender of Preliminary Permit

February 22, 1983.

Take notice that Timothy A. Ward, Permittee for the proposed Champlain Feeder Canal Project No. 6122, requested by letter dated January 20, 1983, that his preliminary permit be terminated. The preliminary permit was issued September 15, 1982, and would have expired on March 30, 1984. The project would have been located on the Champlain Feeder Canal in Washington County, New York.

The surrender of the preliminary permit for Project No. 6122 is accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4982 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-751-000, ER78-414-000, ER80-363-000, and ER81-504-000]

Delmarva Power & Light Co.; Offer of Settlement

February 22, 1983.

Take notice that on February 2, 1983, Delmarva Power & Light Company (Delmarva) and the Delaware municipalities of Newark, New Castle, Smyrna, and Milford (Municipalities) submitted for filing the following: 1. An offer of Settlement in Docket Nos. ER78-414, ER80-363, ER81-504 and ER82-751; 2. Partial requirements agreements between Delmarva and the Municipalities in Docket No. ER82-751; 3. Transmission agreements between Delmarva and the Municipalities in Docket No. ER82-751; and 4. A Settlement Agreement between Delmarva and the Municipalities in Docket No. ER82-751.

Delmarva and the Municipalities request that consideration of this offer of settlement be consolidated in Docket No. ER82-751.

Delmarva and Municipalities respectively request that the instant Offer of Settlement be certified to the Commission for acceptance and approval; that the Commission direct the consolidated consideration requested herein; that waiver of Rule 602(c)(1)(iv) be granted; and that the service agreements be made effective as tendered.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 1, 1983. Reply comments may be filed not later than March 8, 1983. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4981 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-180-000]

Montana-Dakota Utilities Co., Complainant v. Colorado Interstate Gas Company, Respondent; Complaint and Request for an Order

February 22, 1983.

Take notice that on February 1, 1983, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP83-180-000 pursuant to Section 385.206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint and request for an order directing the resumption of the purchase of gas, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

It is asserted that MDU sells gas to Colorado Interstate Gas Company (CIG) pursuant to its Rate Schedule X-5. MDU states that in November 1982, CIG notified MDU that due to market difficulties CIG would have to reduce purchases of gas to 2,360,000 Mcf for the year 1983. MDU states that Rate Schedule X-5 contains a minimum purchase obligation necessitating CIG to purchase 17,000,000 Mcf of gas per year and that its purchase obligation is firm. MDU contends that CIG's reduction in takes from MDU is an abandonment of service without prior authorization of the Commission under the Natural Gas Act to the detriment of MDU, MDU's customers, and CIG's customers.

MDU requests in its complaint that the Commission issue an order directing CIG to resume taking gas from MDU pursuant to the terms of MDU's Rate Schedule X-5 and to require that such takes resume immediately.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that CIG is directed to file with the Commission its answer to MDU's subject complaint no later than the intervention due date in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.213).

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4982 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP83-15-000]

Pressure Transport, Inc.; Application for Authorization To Collect Production Related Costs Under Section 110 of the NGPA

February 22, 1983.

On January 27, 1983, Pressure Transport, Inc. (PTI) filed with the Federal Energy Regulatory Commission (Commission) an application for authorization to collect production related costs pursuant to section 110 of the Natural Gas Policy Act of 1978 (NGPA) and §§ 271.1104 and 271.1105 of the Commission's regulations.

PTI proposes to purchase from Southern Gas Purchasing, Inc. natural gas produced from wells located in the Hornaday area, Daviess County, Indiana. PTI proposes to resell this gas at the maximum lawful price, including production related costs, to Texas Eastern Transmission Corporation (Texas Eastern). PTI states that the production related costs would consist of transportation costs, as provided in 18 CFR 271.1104(c)(2).

PTI proposes to transport the natural gas by means of a trucking system under which the natural gas would be compressed in specially designed tubes which are loaded upon a trailer and then transported by truck for a distance of approximately 9 miles to a Texas Eastern pipeline tap. The system's estimated monthly delivery would equal 43,320 MMBtu and the estimated total monthly transportation charge would be $52,100. Accordingly, PTI seeks authorization to collect an estimated charge of $1.20 per MMBtu for the truck transportation of this gas, as a production related cost. PTI indicates that the actual costs per MMBtu may vary depending on volumes of gas actually delivered.

Any person desiring to be heard or to protest this petition should file, within 30 days after publication of this notice in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4883 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-148-000]

San Diego Solar Concepts II, Ltd.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 23, 1983.

On January 17, 1983, San Diego Solar Concepts II, Ltd., P.O. Box 20173, San Jose, California 95160, filed with Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located in Borrego Springs, San Diego, California. The facility will consist of a maximum of 150 solar modules floating in cooling ponds. No oil or gas will be used in the facility. The electric power production capacity of the facility will be 150 kilowatts. Hot water produced in the cooling process will be sold for process use in a nearby plant. Installation of the facility will begin in approximately June 1983. No electric utility, electric holding company or any combination thereof has any ownership in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-4884 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-774-000, ER83-209-000 and ER83-227-000; and Docket Nos. ER82-829-000 and ER83-219-000]

Tapoco, Inc. and Nantahala Power and Light Co.; Order Accepting for Filing and Suspending Rate Schedules, Consolidating Dockets, Granting and Denying Motions, Waiving Notice Requirements, Granting Interventions, and Establishing Hearing Procedures

Issued: February 18, 1983.

Background

On September 3, 1982, and September 23, 1982, Tapoco, Inc. (Tapoco) and Nantahala Power and Light Company (Nantahala) filed (Docket Nos. ER82-774-000 and ER82-829-000) Notices of Termination of their filed rate schedules known as the New Fontana Agreement (NFA) and the related 1971 Apportionment Agreement. The NFA is a power coordination and exchange arrangement between the Tennessee Valley Authority (TVA), Tapoco, Nantahala, and Aluminum Company of America (ALCOA), the parent company of Tapoco and Nantahala. Under the terms of the NFA, the hydroelectric generation of Tapoco and Nantahala is dispatched by, and delivered to TVA. In return, TVA provides Tapoco and Nantahala with fixed power and energy entitlements. These entitlements are rendered by TVA jointly to Tapoco and Nantahala. The contract provided for expiration by its own terms on December 31, 1982. The 1971 Apportionment Agreement between Tapoco and Nantahala allocates between the two companies the entitlement from TVA pursuant to the NFA. The Apportionment Agreement also provided for expiration by its own terms on December 31, 1982.

The Commission issued an order on November 22, 1982,[1] which accepted the Notices of Termination for filing, suspended their effectiveness for five months, and set the matter for expedited hearing to determine if the terminations were in the public interest.

Instant Submittals

On December 23, 1982, and December 30, 1982, Tapoco and Nantahala submitted for filing in Docket Nos. ER82-209-000 and ER82-219-000 proposed new agreements between Tapoco and TVA and between Nantahala and TVA to replace the NFA and the 1971 Apportionment Agreement.[2] In addition, on December

[1] *Tapoco, Inc. and Nantahala Power & Light Company*, Docket Nos. ER82-774-000 and ER82-829-000, 21 FERC ¶ 61,112 (November 22, 1982).

[2] *See* Attachment A for rate schedule designations.

30, 1982. Tapoco filed a Notice of Termination of its FPC Rate Schedule No. 2 as a result of the proposed cancellation of the NFA (Docket No. ER83-227-000). Tapoco and Nantahala have requested waiver of the notice requirements in order that their submittals may become effective as of January 1, 1983, the day after the earlier agreements were to have expired.

Under the proposed agreement between Nantahala and TVA, Nantahala will provide the maximum amount of its wholesale requirements from its own hydroelectric resources rather than being limited to the fixed entitlements specified under the NFA and the 1971 Apportionment Agreement. The proposed agreement contains a service schedule under which TVA will provide Term Power to supplement Nantahala's own hydroelectric resources. Under a second service schedule, TVA will purchase, on a split-the-savings basis as Economy Energy, such excess generation as Nantahala may have available. Nantahala will pay TVA a monthly demand charge equal to TVA's prevailing rate for firm power and an associated energy charge equal to TVA's incremental cost, plus an adder of 6.5 mills/kWh.[3] The proposed agreement also specifies interconnection and delivery points between Nantahala and TVA as well as the transmission and distribution facilities to be operated or used by each party. Payments under the agreement for the use of transmission and distribution facilities are principally made by Nantahala for its use of certain TVA facilities.

The proposed agreement between Tapoco and TVA is a power coordination and exchange agreement under which Tapoco will exchange its generation in return for capacity and energy entitlements from TVA. Unlike the present arrangement, the proposed agreement is designed to ensure that there be an equal exchange of kilowatt hours between Tapoco and TVA over the twenty year term of the agreement.[4] In order to accomplish this, the proposed agreement provides that Tapoco's entitlements will be fixed at 185 MW, as compared to approximately 172 MW under the NFA and 1971 Apportionment Agreements, for the first ten years of the new agreement with a true-up provision which will decrease or increase Tapoco's entitlements over the remaining ten year life of the contract.

Tapoco's proposed agreement also takes into consideration the fact that Tapoco, Nantahala, and TVA are interconnected at Tapoco's Santeetlah Project and TVA currently uses such interconnection for deliveries to Nantahala. Accordingly, Tapoco will continue to make this interconnection available for TVA's use in deliveries to Nantahala in return for payment by TVA of the operation and maintenance expenses (estimated to be $1200/yr.) incurred by Tapoco on these facilities. Additionally, in order to facilitate TVA deliveries to Nantahala, Tapoco will continue to make available to TVA specified amounts of capacity in certain 161 kV lines extending from various points to the interconnection with Nantahala at the Santeetlah Switchyard.

As noted, Tapoco has also filed a Notice of Termination with respect to Tapoco Rate Schedule FPC No. 2. Under that rate schedule, Tapoco relays TVA dispatching instructions to Nantahala for the coordinated operation of Tapoco, Nantahala, and TVA facilities under the NFA.

Notices of the filings in Docket Nos. ER83-209-000 and ER83-219-000 were published in the Federal Register with comments due on the Tapoco Filing by January 18, 1983, and on the Nantahala filing by January 24, 1983.[5] A timely protest and motion to intervene coupled with certain other motions was filed by the Town of Highlands, North Carolina (Highlands) in each docket. The Attorney General of the State of North Carolina also filed a timely protest and motion to intervene together with related motions. The North Carolina Electric Membership Corporation (NCEMC) and the Haywood Electric Membership Corporation (Haywood) jointly filed an untimely protest, motion to intervene, and other motions in each docket.

Highlands requests that the filings be rejected for Tapoco's and Nantahal's failure to file a certificate of concurrence in the agreements on behalf of ALCOA and for Tapoco's failure to: (1) Obtain Commission approval for the transfer of certain facilities; and (2) comply with the Commission's filing requirements in that Tapoco has not included in its filing the new ALCOA-TVA contract. Highlands also maintains that the Tapoco-TVA agreement should be rejected in view of its provisions which give TVA the right of first refusal to purchase Tapoco's facilities. In the event that the Commission does not reject the filings, Highlands requests that the filings be suspended for one day and set for hearing in order to provide an opportunity for the Commission to determine: (1) The justness and reasonableness of the new agreements; (2) if severance of the relationship between Nantahala and Tapoco is in the public interest; and (3) the extent to which the public interest may require a further investigation as to whether the actions being taken by Nantahala and Tapoco constitute violations of their hydroelectric licenses and as to whether such licenses should be revoked or modified. Additionally, Highlands requests that the Tapoco and Nantahala proceedings be consolidated with the pending proceedings in Docket Nos. ER82-774-000 and ER82-829-000 and that ALCOA be joined as a party to any proceedings in Dockets Nos. ER83-209-000 and ER83-219-000. In an amendment to its protest and motion to intervene, Highlands also requests that any Commission order in this proceeding be conditioned upon Tapoco's agreement to provide wholesale services to Highlands, subject to Highlands' obtaining arrangements with Nantahala (and/or TVA) for transmission service.

The pleadings filed jointly by NCEMC and Haywood and those filed by the State of North Carolina raise issues similar to those presented by Highlands. However, NCEMC and Haywood request a five month suspension in both dockets instead of one day, while the State of North Carolina requests a five month suspension in the Tapoco docket and a one hour suspension in the Nantahala docket. NCEMC and Haywood also concurrently filed a motion requesting permission to intervene out of time in the Tapoco docket, and the State of North Carolina filed a motion for leave to file a corrected protest in the Tapoco docket.

Tapoco and Nantahala have each filed, in their respective dockets, an answer in opposition to the motions filed by Highlands, Haywood, NCEMC, and North Carolina. Tapoco requests that the collective motions to intervene be denied on the grounds that those parties lack standing in the Tapoco docket. Tapoco objects to each of the requests advanced in the pleadings

[3] Nantahala estimates that its total cost of power from TVA under the proposed agreement will not initially exceed the charges now paid to TVA for power to supplement its fixed entitlements under the current NFA and 1971 Apportionment Agreement.

[4] Under the present agreement, Tapoco receives approximately 172 MW of capacity and associated energy from TVA in exchange for its own generation. As a result of higher than average stream flow conditions, Tapoco has in the past received fewer kilowatt hours than it has delivered to TVA.

[5] Notice of the submittal in Docket No. ER83-227-000 was also published with responses due by February 3, 1983. A timely protest and motion to intervene coupled with other motions was jointly filed by Highlands and the State of North Carolina. NCEMC and Haywood jointly filed an untimely protest, motion to intervene, and other motions. In these pleadings the intervenors raise substantially the same issues as those which they have raised in Docket Nos. ER83-209-000 and ER83-219-000.

arguing that the movants have no independent interest in the Tapoco proceeding, that they are essentially seeking to relitigate matters previously resolved in Opinion Nos. 139 (19 FERC ¶ 61, 152) and 139–A (20 FERC ¶ 61,430), and that there are no common issues of law and fact which would warrant consolidation with Docket Nos. ER83–219–000, ER82–774–000, and ER82–829–000.

Nantahala objects to the motions to intervene, to reject its filing as deficient, and to consolidate, for essentially the same reasons as those advanced by Tapoco. Nantahala, however, does not argue that the parties lack standing to intervene in the Nantahala docket. Instead, Nantahala bases its objection to intervention on the fact that the new Nantahala-TVA interconnection agreement will mean considerable savings to its customers which should be passed on without delay. In addition, Nantahala argues that the new interconnection agreement should be approved because TVA has indicated that it will be, and in fact is, operating under that agreement. Furthermore, Nantahala contends that consolidation with Docket Nos. ER82–774–000 and ER82–829–000 would unnecessarily complicate and delay a determination of the reasonableness of Nantahala's new interconnection agreement, and would burden Nantahala and its customers with additional legal fees and expenses.

Tapoco also filed a respnse to the motions made in Docket No. ER83–219–000 in which it advances many of the same arguments and objections contained in its response to the motions filed in Docket No. ER83–209–000. In addition, Tapoco argues that there is no justication for joining either itself or ALCOA in any proceedings involving the Nantahala-TVA agreement. Furthermore, Tapoco contends that there are no issues to set for hearing, and that there is no justification for consolidation. However, if ther is to be a consolidated investigation of the new agreements, Tapoco proposes that TVA be made a party. Tapoco also urges the Commission, in the event of consolidated proceedings, to join the North Carolina Utilities Commission (NCUC) as a full party because the intervenors allegedly have urged the NCUC in the past to defy Commission determinations. Therefore, Tapoco contends that the NCUC should be present, participate as a full party, and be bound by the result.[6]

On February 4, 1983, Tapoco filed a motion to reject North Carolina's motions to consolidate the subject dockets and North Carolina's protest and motion to intervene in Docket No. ER83–219–000, on the grounds of failure to provide timely service and an alleged misstatement in North Carolina's certificate of service as to the date on which service was, in fact, made.

In addition to the pleadings filed with respect to the new agreements with TVA, Tapoco and Nantahala also filed Motions to Withdraw and Terminate Proceedings in Docket Nos. ER82–774–000 and ER82–829–000 on December 23, 1982, and December 30, 1982. The motions are based on the fact that both Tapoco and Nantahala have entered into superseding agreements and have filed such agreements with the Commission. Since the purpose of the proceeding initiated in the earlier dockets was to determine the justness and reasonableness of the termination of the previous agreements in the absence of replacement contracts, Tapoco and Nantahala argue that the pending proceedings are moot. On January 6, 1983, the Commission's trial staff filed a response in support of the motions to withdraw and terminate.[7]

On January 7, 1983, Highlands, Haywood, and NCEMC responded to the Nantahala and Tapoco motions. They do not oppose withdrawal of the notices of termination, but they do oppose the requests to terminate the earlier proceeding.

North Carolina responded one day out of time, opposing withdrawal of the notices of termination as well as termination of the proceedings. North Carolina concurrently filed a complaint against ALCOA, Tapoco, and Nantahala in Docket No. EL83–6–000. North Carolina refers to its allegations in this complaint as support for its contention that the new contracts do not replace the services rendered under the previous agreements. North Carolina, therefore, contends that the proceedings should be continued and consolidated with the complaint proceeding.[8]

Discussion

As noted, NCEMC and Haywood jointly filed untimely motions to intervene in Docket Nos. ER83–209–000, ER83–219–000 and ER83–227–000. Tapoco challenges the standing of Highlands, Haywood, NCEMC, and the State of North Carolina to intervene in Docket No. ER83–209–000 asserting that none of these movants is a customer of Tapoco's and none has an interest in the proposed agreement between Tapoco and TVA. Despite these contentions, we find that these movants may have an interest in the proposed Tapoco-TVA agreement as well as the Nantahala-TVA agreement insofar as they will supersede the NFA and 1971 Apportionment Agreement, and the existing practice for allocating entitlements thereunder. Each of the movants was permitted to intervene in Docket Nos. ER82–774–000 and ER82–829–000 over objection by Tapoco and we continue to believe that they may be directly affected by Commission action in any of these dockets and that their participation in these proceedings will enhance the evidentiary record before the Commission. Furthermore, given the fact that untimely intervention should not prejudice any party or unduly delay the proceedings, we find that good cause exists to grant the untimely motions to intervene. Accordingly, each of the motions to intervene filed in these dockets will be granted.

We shall deny Tapoco's motion to reject North Carolina's motion to consolidate and its protest and motion to intervene in Docket No. ER83–219–000, for failure of service. It is not clear on the face of the pleadings that service was not made in accordance with our Rules of Practice and Procedure. Moreover, North Carolina's pleadings in Docket No. ER83–219–000 and its motion to consolidate raise substantially the same issues as those raised by the other intervenors, and by North Carolina in Docket No. ER83–209–000. Therefore, Tapoco will not be prejudiced if we decline to reject these pleadings. Furthermore, we shall grant North Carolina's motion for leave to file a corrected protest. Given the technical nature of the corrections, no prejudice or undue delay should result from accepting the corrected protest.

We shall deny the motion to join ALCOA as a party to the consolidated proceeding. The Commission determined in Opinion No. 139, *supra*, that Tapoco and Nantahala are not operated as an integrated system; they are appropriately treated as separate operating entities. We also found that ALCOA has not used the separate corporate identities of Nantahala and Tapoco to frustrate the purposes of the Federal Power Act. We do not believe that ALCOA is a necessary party to a proceeding designed to determine the

[6] We are not inclined to consider the requests to join TVA or the state regulatory authority *sua sponte* absent any indication that they desire to participate. Should these non-jurisdictional entities so choose, they may file an appropriate motion.

[7] The Commission gave notice of its intent to act on the motions to withdraw and terminate on January 24, 1983.

[8] Because the period for responses to the complaint has not yet elapsed, we shall not take action on Docket No. EL83–6–000 in this order. Rather, we shall address the complaint and the request for consolidation in a subsequent order.

justness and reasonableness of the proposed agreements or the termination of the prior agreements.

Because ALCOA is not a party to the new agreements filed by Tapoco and Nantahala, we shall deny the motions to reject the filings insofar as they are based on the absence of a certificate of concurrence of ALCOA. The intervenors have advanced several bases for rejection of Tapoco's filing. First, the intervenors request that Tapoco's filing be rejected for failure to obtain prior Commission approval for the transfer of certain facilities. Tapoco has given TVA the right to use certain 161 kV transmission and substation facilities for its delivery to Nantahala at Tapoco's Santeetlah Switchyard. In connection with this argument, we note that TVA has had in the past, the right to use certain Tapoco facilities in order to make deliveries to Nantahala. However, while this issue may be an appropriate subject for hearing, it does not represent a basis for rejection. Second, the intervenors request rejection of Tapoco's filing on the basis that it gives TVA the right of first refusal to purchase Tapoco generating and transmission facilities. We believe that this position warrants further investigation but again, we do not find that it constitutes a basis for rejection of the filing. Because the submittals in Docket Nos. ER83-209-000 and ER83-219-000 are in substantial compliance with our regulations [9] and no other grounds for rejection have been demonstrated, we shall deny the motions to reject.

As noted, in accepting the instant agreements for filing, Highlands effectively seeks an order of the Commission compelling Tapoco to provide wholesale service directly to Highlands. Even assuming, arguendo, that such relief would be considered available or appropriate following a hearing on the merits, we do not believe that it would be proper to entertain Highlands' request at this time. Little substantive basis or legal support for the relief sought has been offered by Highlands thus far and the request, in effect, asks the Commission to prejudge a variety of issues which we believe must be resolved on the basis of a hearing record. Accordingly, we shall deny Highlands' request for conditional acceptance of the filings at issue. [10]

Our review of Nantahala's and Tapoco's filings and the related pleadings indicates that the proposed agreements as well as the Notice of Cancellation in Docket No. ER83-227-000 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. As a result, we shall accept the submittals for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy primarily in the context of contested rate increases. As noted above, it appears that the instant filings may result in little, if any, total change in costs. Rather, the filings are intended to replace earlier agreements that were to have expired by their own terms as of the end of 1982. At least some of the affected intervenors support waiver of notice and a nominal suspension. Given the nature of the submittals and the fact that the new agreements will be made subject to refund and potential modification, we find that good cause exists to grant waiver of notice and suspend the filings for one day to become effective, subject to the outcome of a hearing, on January 2, 1983. In light of the questions raised by the intervenors, we believe that the consolidated hearing should encompass the issue of Nantahala's ability to continue to provide adequate service to its wholesale customers as well as possible hydroelectric license violations.

Concerning Nantahala's and Tapoco's motions to withdraw the notices of termination and terminate the proceedings in Docket Nos. ER82-774-000 and ER82-829-000, we note that there is uncertainty a to the scope of any issues which may remain in that proceeding despite the filing of the proposed replacement agreements. [11] The intervenors have indicated in their responses to Nantahala's and Tapoco's motions that they believe that the ongoing proceedings have not been rendered moot by the filing of the proposed agreements and should not be terminated. In addition, the presiding judge in Docket Nos. ER82-774-000 and ER82-829-000 stated in order dated January 14, 1983, that there is a compelling need for the Commission to decide the question of whether termination of the NFA and the 1971 Apportionment Agrement was just and reasonable. Accordingly, we shall grant the motions to withdraw the notices of termination but we shall not terminate the proceedings. Instead, we shall consolidate Docket Nos. ER82-774-000, ER82-829-000, ER83-209-000, ER83-219-000, and ER83-227-000 for purposes of hearing and decision on all relevant issues.

Because the new submittals by Nantahala and Tapoco obviate our earlier concern that cancellation of the NFA and the 1971 Apportionment Agreement could result in an interruption of service, we shall also withdraw our directive in Docket Nos. ER82-774-000 and ER82-829-000 that the presiding judge expedite the proceeding so as to allow a final Commission decision within the suspension period.

The Commission orders:

(A) The motions to reject Tapoco's and Nantahala's filings and to join ALCOA as a party are hereby denied.

(B) The motions by Tapoco and Nantahala for waiver of the notice requirements are hereby granted.

(C) The submittals in Docket Nos. ER83-209-000, ER83-219-000, and ER83-227-000 are hereby accepted for filing and suspended for one day to become effective on January 2, 1983, subject to refund and the outcome of a hearing.

(D) The interventions of the North Carolina Electric Membership Corporation, the Haywood Electric Membership Corporation, the Town of Highlands, and the Attorney General of the State of North Carolina are hereby granted subject to the Commission's Rules of Practice and Procedure.

(E) The motion of the State of North Carolina for leave to file a corrected protest in Docket No. ER83-209-000 is hereby granted.

(F) The motion of the State of North Carolina to file a response one day out of time to the Tapoco motion to

[9] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F. 2d 1341 (D.C. Cir. 1971).

[10] Tapoco has objected to Highlands' request for an order compelling Tapoco to provide wholesale service, asserting that this precise issue was addressed and resolved in Opinion No. 139, *supra*. It is Tapoco's view that Highlands' motion relies on section 202(b) of the Federal Power Act, that this issue was raised and specifically decided in the proceeding underlying Opinion No. 139, and that *res judicata* should preclude renewed litigation of an issue which has been previously resolved. We previously advised the presiding judge in Docket Nos. ER82-774-000 and ER82-829-000 to take necessary measures to avoid unnecessary relitigation of issues (21 FERC ¶ 61,112). However, it is not clear from Highlands' brief discussion of this issue whether it, in fact, seeks relief exclusively under section 202(b). Furthermore, we do not agree that the issue of a section 202(b) interconnection was "fully litigated" in the earlier hearing. Rather, at the outset of that proceeding, the Commission found it unnecessary to separately consider a section 202(b) interconnection, since Highlands had asked "only that *its rates be adjusted* to reflect Tapoco's lower-cost hydroelectric power." (5 FERC ¶ 61,134). Thus, the Commission dismissed Highlands' request for relief under section 202(b).

[11] In connection with the motions to withdraw the notices of termination and terminate the proceedings, we shall grant North Carolina's motion for leave to file its response to the Tapoco motion one day out of time. The other parties have not objected and we do not find that any prejudice or undue delay will result.

terminate proceedings in Docket No. ER82-774-000 is hereby granted.

(G) The motions to withdraw the notices of termination in Docket Nos. ER82-774-000 and ER82-829-000 are hereby granted as discussed in the order. The motions to terminate these proceedings are hereby denied.

(H) The motion of the Town of Highlands that an order by the Commission be conditioned upon Tapoco's agreement to provide wholesale services to Highlands is hereby denied as noted in the body of this order.

(I) The motion by Tapoco to reject North Carolina's motion to consolidate Docket Nos. EL83-6-000, ER82-774-000, ER82-829-000, ER83-209-000, and ER83-219-000, and its protest and motion to intervene in Docket No. ER83-219-000, is hereby denied.

(J) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particulary sections 19, 20, 205, and 206 thereof, and pursuant to the Commission's Rules of Pracitce and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Tapoco's and Nantahala's filings, and the appropriateness of further proceedings under sections 19 and 20 of the Federal Power Act. The Commission's November 22, 1982 directive that the presiding judge expedite the hearing on cancellation of the NFA and 1971 Apportionment Agreement is hereby withdrawn.

(K) Docket Nos. ER83-209-000, ER83-219-000, and ER83-227-000 are hereby consolidated with Docket Nos. ER82-774-000 and ER82-829-000 for purposes of hearing and decision.

(L) The administrative law judge designated to preside in Docket Nos. ER82-774-000 and ER82-829-000 shall convene a conference in these proceedings to be held within approximately fifteen (15) days of the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Such conference shall be held for purposes of determining the procedures best suited for this consolidated proceeding.

(M) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Tapoco, Inc., Rate Schedule Designations

Docket Nos. ER83-209-000 and ER83-227-000

(1) Supplement No. 1 to Rate Schedule FPC No. 2 (Cancels Rate Schedule FPC No. 2).

(3) Rate Schedule FERC No. 6 (Supersedes Rate Schedule FPC No. 3).

Nantahala Power and Light Company, Rate Schedule Designations

Docket No. ER83-219-000

(1) Rate Schedule FERC No. 3 (Supersedes Rate Schedule FPC No. 1).

(2) Supplement No. 1 to Rate Schedule FERC No. 3 (Term Power—Service Schedule A).

(3) Supplement No. 2 to Rate Schedule FERC No. 3 (Economy Energy—Service Schedule B).

[FR Doc. 83-4985 Filed 2-25-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 24 Through January 28, 1983

During the week of January 24 through January 28, 1983, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also includes a submission that was dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 18, 1983.

Appeal

Dorothy Taylor, January 28, 1983, HFA-0105

Dorothy Taylor filed an Appeal from a partial denial by the Assistant General Counsel for General Litigation of a Request for Information which Mrs. Taylor had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Assistant General Counsel had agreed to release the only document that had been withheld. Accordingly, Mrs. Taylor's Appeal was granted.

Interlocutory Orders

Gulf Oil Corporation, January 26, 1983, HRZ-0100

Gulf Oil Corporation sought an order deeming as admitted by the Office of Special Counsel for Compliance (OSC) certain matters in an enforcement proceeding before the Office of Hearings and Appeals. The DOE entered an order deeming as admitted those factual assertions made by Gulf in its Statement of Objections, Part III (SFO III) to a Proposed Remedial Order OSC issued to the firm on May 1, 1979 not controverted by OSC in its Response to SFO III.

Texaco Inc., January 25, 1983, HRZ-0113

Texaco Inc. filed a motion to compel the Office of Special Counsel (OSC) to respond more fully to interrogatories approved by the Office of Hearings and Appeals. Under the terms of the interrogatories, OSC was required to produce to Texaco, subject to claims of privilege, all documents authored or approved by responsible agency officers concerning specified issues. Texaco sought to compel OSC to produce 49 documents authored or approved by lower level agency employees. OHA denied the motion, finding that OSC's withholding of the documents was consistent with the responsible agency officer limitation.

Implementation of Special Refund Procedures

Office of Enforcement: In the matters of Sid Richardson Carbon and Gasoline Company and Richardson Products Company, Texas Oil and Gas Corporation, and Ozona Gas Processing Plant, BEF-0022, BEF-0027, BEF-0046, BEF-0056

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with the four firms identified above. The funds will be available to customers which purchased natural gas liquids and products that originated from the four firms during the relevant periods. Applications for refund must be filed within 90 days of the publication of the decision in the **Federal Register.** Specific requirements for Applications for Refund adopted for the four cases are discussed in the decision.

Refund Applications

The Charter Company/PEP-O Petroleum Company, Inc., January 27, 1983, RF23-2

The Office of Hearings and Appeals granted an Application for Refund filed by PEP-O Petroleum Company, Inc., for a portion of the Charter Company consent order fund pursuant to the procedures set forth in *Office Of Special Counsel (Charter)*, 10 DOE ¶ 85,039 (1982).

Standard Oil Company (Indiana) /Ron's Ray Brothers Standard et al, RF21-33

On December 23, 1982 the Office of Hearings and Appeals issued a Decision and

Order setting forth the procedures for distributing the Amoco settlement fund. *See* 42 FR 144 (January 3, 1983). Ron's Ray Brothers Standard and 56 other motor gasoline retailers filed applications seeking refunds pursuant to the presumptions set forth in these procedures. The DOE approved the applications.

Dismissal

The following submission was dismissed:

Name	Case No.
Energy Cooperative, Inc.	HEE-0023

[FR Doc. 83-5002 Filed 2-25-83; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00040; TSH-FRL 2312-1]

Administrator's Toxic Substances Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Administrator's Toxic Substances Advisory Committee (ATSAC) will convene to discuss activities of the Office of Toxic Substances including participation in the Organization for Economic Cooperation and Development (OECD) projects and biotechnology issues. The meeting will be open to the public.

DATE: The meeting will take place on Friday, March 18, 1983, at 9:00 a.m. and adjourn by 3:00 p.m.

ADDRESS: The meeting will be held in: Rm. M-3908, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Marylouise Uhlig (202-382-2906)

or

Phyllis Hetrick-Bennett (202-382-3721).

SUPPLEMENTARY INFORMATION: The ATSAC agenda will begin with an update on program activities of the last six months by staff persons from the Office of Toxic Substances (OTS). At 10:00 a.m. Don R. Clay, Director of OTS, will discuss EPA participation in the OECD projects.

The Agency has requested the ATSAC to consider biotechnology issues. During the morning session, representatives from OPTS and OTS will report on the offices' activities in this area and at 1:00 p.m. the ATSAC will hear from the public. One of the speakers will be Dr. Harvey Price, Director of the Industrial Biotechnology Association.

The Committee is interested in gathering information on such questions as: What is the public perception of the benefits/risks of biotechnology? What are the most promising areas for the application of biotechnology? Where are the largest markets for commercial application? What kinds of special scientific/technical staff expertise might EPA need in the future to evaluate biotechnology products' effects upon human health and the environment? What encouragement could the Agency offer to see that training in this area is developed by universities and other organizations?

The meeting will be open to the public, and time will be set aside for public comments concerning the work of the Committee. Any member of the public wishing to present an oral or written statement relating to the Committee's work should contact the ATSAC staff at the address or phone numbers listed above.

Dated: February 18, 1983.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-4953 Filed 2-25-83; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59114A; TSH-FRL 2312-6]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: February 18, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St. SW., Washington, D.C. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the application, and for the time period specified by the submitter, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the application. All other conditions described in the application must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-19

Date of Receipt: January 19, 1983.

Notice of Receipt: February 4, 1983 (48 FR 5306).

Applicant: Confidential.

Chemical: (Generic): unsaturated amide quaternary ammonium polymer.

Use: Confidential.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Environmental Release: Confidential.

Test Marketing Period: Confidential.

Commencing on: February 18, 1983.

Risk Assessment: No significant human health effects are expected. Although the TME substance may be toxic to aquatic organisms, EPA does not expect release of the substance at levels sufficient to result in any significant risk.

Public Comments: None.

The Agency reserves the right to rescind approval of the exemption shuld any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: February 18, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-4970 Filed 2-25-83; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59118; TSH-FRL 2312-3]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: March 15, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59118]" and the specific TME number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-401, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-27

Manufacturer. Confidential.

Chemical. (G) Zirconium propanolate, substituted.

Use/Production. Confidential. Product range: Confidential.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

TME 83-28

Manufacturer. Confidential.

Chemical. (G) Modified rosin condensation product.

Use/Production. (S) Industrial hot melt adhesives. Product range: Confidential.

Toxicity Data. Confidential.

Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 1 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air, water and land. Disposal by biological treatment system.

Dated: February 22, 1983.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 83-4985 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51455; TSH-FRL 2312-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the **Federal Register** of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). This notice announces receipt of eleven PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 83-484 and 83-485, May 14, 1983.

PMN 83-486, 83-487, 83-488 and 83-489, May 15, 1983.

PMN 83-490, May 16, 1983.

PMN 83-491, 83-492, 83-493 and 83-494, May 17, 1983.

Written comments by:

PMN 83-484 and 83-485, April 14, 1983.

PMN 83-486, 83-487, 83-488 and 83-489, April 15, 1983.

PMN 83-490, April 16, 1983.

PMN 83-491, 83-492, 83-493 and 83-494, April 17, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-51455]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202) 382-3532).

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

PMN 83-484

Manufacturer. Confidential.

Chemical. (G) Copolymer of unsaturated organic compounds with polyols and isocyanates.

Use/Production. (S) Binder for magnetic tape. Prod. range: 15,000-350,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 kg/yr released to air and water with 10-10,000 kg/yr to land. Disposal by incineration and approved landfill.

PMN 83-485

Manufacturer. Confidential.

Chemical. (G) Alkyl branched alkanoate.

Use/Production. (S) Industrial site limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 500 mg/kg; Irritation: Skin—None, Eye—Slight; Inhalation: 2.4 mg/1; Ames Test: Non-mutagenic.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Release is negligible. Disposal by biological waste treatment system or thermal oxidizer.

PMN 83-486

Manufacturer. Confidential.

Chemical. (G) Zirconium propanoate, substituted.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. No release.

PMN 83-487

Manufacturer. Confidential.

Chemical. (G) Alkyl sulfide.

Use/Production. Confidential. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-488

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic ester and substituted acrylamide.

Use/Production. (G) A minor constituent in an article for commercial and consumer use. Prod. range: 7,500-15,000 kg/yr.

Toxicity Data. Acute oral: >3,000 mg/kg; Acute dermal: >20 mL/kg; Irritation: Skin—Slight, Eye—Not an irritant; Skin sensitization: Low potential; Repeated Skin application: Slightly exacerbates the irritative response; Acute effects on seven aquatic species: >100 mg/L; Secondary waste treatment compatibility study: >5,000 mg/L; Plant growth effects: No significant effects at 100 mg/L; BOD_5: 0.005 g/ml at 600 µl/L; BOD_{20}: 0.006 g/ml at 600 µl/l; TOD: 0.34 g/ml.

Exposure. Manufacture and processing: dermal, a total of 45 workers, up to 1 hr/da, up to 100 da/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and incineration.

PMN 83-489

Manufacturer. Hercules, Incorporated.

Chemical. (G) Styrene, acrylate methacrylate copolymer.

Use/Production. (S) Toner resin for dry copier. Prod. range: 300,000-700,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. 10-100 kg/yr released to air with less than 10 kg/yr to water, 12.5 hrs/da, 24 da/yr. Disposal by publicly owned treatment works (POTW).

PMN 83-490

Manufacturer. Confidential.

Chemical. (G) Modified coconut-phthalic-mixed polyol alkyd polymer.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacturer: dermal, inhalation and eye or frequent exposure during working hours.

Environmental Release/Disposal. 5,000-50,000 kg/yr released to land. Disposal by incineration, approved landfill and sewer system.

PMN 83-491

Manufacturer. Confidential.

Chemical. (G) Sodium carboxyalkyl thiosulfate.

Use/Production. (S) Leather dehairing. Prod. range: confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Moderate, Eye—Moderate: LC_{50}, 48 hr (minnow): 10-100 mg/1.

Exposure. Manufacture, use and disposal: dermal, a total of 10 workers, up to 6 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. 10-1,000 kg/yr to water, up to 2 hrs/da, up to 300 da/yr. Disposal by POTW.

PMN 83-492

Manufacturer. Reilly Tar & Chemical Corporation.

Chemical. (S) 4-(4-methyl-1-piperidinyl)pyridine.

Use/Production. (G) Catalyst. Prod. range: Confidential.

Toxicity Data. BOD_5 (2.5 mg/L): .016—.128.

Exposure. Manufacture and use: dermal and inhalation, a total of 56 workers, minimal.

Environmental Release/Disposal. Minimal release to water. Disposal by POTW.

PMN 83-493

Manufacturer. Confidential.

Chemical. (G) Alkoxylated alcohol compounds.

Use/Production. (G) Open use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 83-494

Manufacturer. Confidential.

Chemical. (G) Propylene glycol compounds.

Use/Production. (G) Site limited intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: February 22, 1983.

Woodson W. Bercaw,

Acting Director, Management Support Division.

[FR Doc. 83-4998 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59073B; TSH-FRL 2312-7]

Substituted Methyldisilane; Extension of Test Marketing Exemption Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the test marketing period for 1 year for test marketing exemption (TME) TM-81-48, under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). Notice of approval of the TME was published in the **Federal Register** of January 7, 1982 (47 FR 850).

EFFECTIVE DATE: This extension is effective on February 16, 1983.

ADDRESS: Written comments, identified by the document control number [OPTS-59073B; TM-81-48], may be submitted on or before March 17, 1983, and should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Theodore Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St., SW., Washington, D.C. 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

On December 30, 1981, EPA granted a test marketing exemption (TM-81-48) for a substituted methyldisilane. The substance is to be used as a coating. The company claimed its identity, the specific chemical identity, and the specific use of the chemical to be confidential business information. Notice of approval of the TME was published in the **Federal Register** of January 7, 1982 (47 FR 850). Approval was based on an Agency finding of adequate worker protection and minimal environmental toxicity and release. Test marketing activity was limited to 1 year.

On January 19, 1983, EPA received a request from the submitter that the test marketing period be extended for an additional year. The company states that its one customer has not yet received or used any of the TME substance, although the full 500 pounds described in the test marketing

exemption application has been manufactured by the submitter.

EPA has decided to extend the 1 year exemption period for an additional year, provided that the submitter not manufacture any more of the new substance, and that all other restrictions specified in the notice of approval of the test marketing exemption remain unchanged. These include record-keeping requirements, and worker protection measures. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of this substance will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant this extension should any new information come to its attention which casts significant doubt on this conclusion.

Dated: January 16, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-4977 Filed 2-25-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A-63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel.

Date: 28-29 March 1983.

Place: Sky Room, Hotel Washington, Penna. Ave. and 15th St., NW, Washington, DC.

Time: 0900-1200; 1400-1700 on 28 March 1983; 0900-1200; 1400-1700 on 29 March 1983.

Proposed agenda: Discussion sessions addressing regional conference program, cooperative program between National Association of Secretaries of State and the Council of Governments, Clearinghouse research program, state disclosure program, Voting Systems Standards Project and the cooperative program between the National Association of Secretaries of State and the Council on Governmental Ethics.

Purpose of the meeting: The Panel will discuss the agenda items as well as present their views on problems in the administration of federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public depending on available space. Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Dr. Gary Greenhalgh, Clearinghouse on Election Administration, Federal Election Commission, 1325 K Street, NW, Washington, DC 20463.

Dated: February 18, 1983.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 83-4998 Filed 2-25-83; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of the document to the person filing the agreement at the address shown below.

Agreement No. T-4075-1.

Title: Oakland/Compagnie Generale Maritime, Admendment.

Parties: Port of Oakland (Port)/ Compagnie Generale Maritime, Hapag Lloyd AG, Intercontinental Transport (ICT) BV (EuroPacific).

Synopsis: Agreement No. T-4075-1, between Port and EuroPacific, amends the basic agreement between the parties by modifying wharfage change compensation for the handling of certain project type cargo off the assigned premises.

Filing Agent: John E. Nolan, Assistant Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, California 94604.

Agreement No. 6200-24

Title: U.S. Atlantic & Gulf/Austrialia-New Zealand conference.

Parties: Trader Navigation Co. Ltd. (Atlanttrafik Express Service); Columbus Line (Hamburg-Sudamer-Kanishe Dampfschifffahrts-Gesselschaft, Eggert & Amsinck); Farrell Lines Incorporated; Pacific America Container Express; The Bank and Savill Line/Shipping Corporation of New Zealand.

Synopsis: The basic agreement would be amended to : (1) Include U.S. intermodal (microbridge) authority; (2) add new subsections (b) and (c) to Article 2 of the agreement to set forth procedures for implementing the microbridge authority and conditions of guarantee for any conference member to continue or initiate any independent intlermodal rate in the trade; and (3) update the names of the various South Sea Islands served by the Comference.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Agreement No. 10374-4.

Title: Hapag-Lloyd/ICT/CGM Space Charter Agreement.

Parties: Hapag-Lloyd, A.G., Intercontinental Transport (ICT) B. V. and Compagnie Generale Maritime.

Synopsis: Agreement No. 10374-4 adds a new Article 12 to the agreement which would permit the parties each to become members of approved conference, rate association, pooling or other agreements operative in the trades covered by the agreement, provided, that, in any instance where the votes of the parties on any matter before such conference or other agreement appear to be indentical, their votes shall be counted as one vote, their votes in all other instances being counted in accordance with each party's respective position.

Filing Agent: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue, Northwest, Washington, D.C. 20036.

Agreement No. 10468.

Title: Latin American Discussion Agreement.

Parties: Chilean Line, Delta Steamship Lines, Inc., Flota Mercante Grancolombiana, S.A., Lykes Bros. Steamship Co. Inc., Transportes

Navieros Equatorianos, and Compania Peruana de Vapores.

Synopsis: Agreement No. 10468 provides for the establishment of a discusion agreement among U.S.-flag and reciprocal-flag carriers serving points in the U.S. and ports on the U.S. Atlantic and Gulf Coasts, and ports or points in Bolivia, Chile, Peru, Ecuador and Columbia. The Agreement will authorize the parties to discuss matters of mautual interest which are set forth in the agreement.

Filing Agent: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, N.Y 10005.

By Order of the Federal Maritime Commission.

Dated: February 23, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-5026 Filed 2-25-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 22, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for Approval of a One-Time Survey

1. Report title: One-Time Survey of Retailers on Credit Card Costs:

Agency form No. FR 3027
Frequency: Nonrecurring
Reporters: Retailers, particularly those dealing with credit cards
SIC Code: 881
Small businesses are affected.
General description of report:
Respondent's obligation to respond is voluntary [12 U.S.C. § 248, § 461]; a pledge of confidentiality is not promised.

This information is needed by the Federal Reserve Board for a Congressionally mandated report to the Congress on the economic impact of credit cards, especially on the selling costs of retailers and the pricing of goods.

Request for Revisions to an Existing Report

1. Report title: Reports of Condition and Income:

Agency form No.: FFIEC 010-015
Frequency: Quarterly
Reporters: State member banks
SIC Code: 602pt.
Small businesses are affected.
General description of report:
Respondent's obligation to reply is mandatory [12 U.S.C. 324]; a pledge of confidentiality is partially promised.

These reports provide for all state member banks a quarterly summary statement and detailed schedules of assets, liabilities, and capital accounts in the form of a condition report, and summary statement and detailed schedule of operating income and expense sources and disposition of income and changes in equity capital in the form of an income statement. Banks with foreign offices also provide additional detail on foreign-related assets, liabilities, etc. These data are used for regulatory, supervisory, policy, and analytical purposes.

The Federal Reserve System has requested that OMB provide a decision to this request for approval in less than ten days.

Board of Governors of the Federal Reserve System, February 22, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-4989 Filed 2-25-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; First Citizens Bancorp of Cherokee County, Inc., et al.

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 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 Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Citizens Bancorp of Cherokee County, Inc.*, Ball Ground, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Ball Ground, Georgia. Comments on this application must be received not later than March 22, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. *Phalia Bancshares, Inc.*, Westphalia, Kansas; to become a bank holding company by acquiring 93.5 percent of the voting shares of The State Bank of Westphalia, Westphalia, Kansas. Comments on this application must be received not later than March 22, 1983.

Board of Governors of the Federal Reserve System, February 22, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-4988 Filed 2-25-83; 8:45 am]
BILLING CODE 6210-01-M

United Jersey Banks; Proposed Acquisition of Richard Blackman & Co., Inc.

United Jersey Banks, Princeton, New Jersey, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(a) of the Board's Regulation Y (12 CFR 225.4(a)), for permission to acquire voting shares of Richard Blackman & Co., Inc., Paramus, New Jersey.

Applicant states that the proposed subsidiary would engage in the following retail securities brokerage activities: (1) purchasing and selling securities solely upon the order and for the account of customers; (2) clearing securities transactions as a clearing broker; (3) extending margin loans to customers in conformity with the Board's Regulation T (12 CFR Part 220); (4) acting as custodian of customers' securities; (5) carrying customers' credit balances, on some of which interest will be paid. Applicant will not offer investment advice. The proposed activities would be performed from offices of Applicant's subsidiary in Paramus, New Jersey, and the geographic areas to be served are the State of New Jersey and the New York City metropolitan area. Such activities have not been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, but the Board is of the view that there is a reasonable basis for Applicant's opinion that the proposed activities are closely related to banking or managing or controlling banks so as to warrant consideration of this application under section 225.4(a) of the Board's Regulation Y (12 CFR 225.4(a)). *See* Board Order approving the application of BankAmerica Corporation to acquire The Charles Schwab Corporation (January 7, 1983).

Interested persons may express their views on the question whether the proposed activities are so closely related to banking, or managing or controlling banks as to be a proper incident thereto, and whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than March 22, 1983.

Board of Governors of the Federal Reserve System, February 22, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-4987 Filed 2-25-83; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Virginia National Bankshares, Inc., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, 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 comment that requests a hearing must include 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 that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Virginia National Bankshares, Inc.*, Norfolk, Virginia (lending and servicing activities, insurance activities; Florida): To engage through a subsidiary known as VNB Equity Corporation, in the activities of making, acquiring, and servicing, for its own account or for the account of others, loans secured principally by second mortgages on real property, and acting as an agent in the sale of credit life insurance and accident and health insurance in connection with such loans. Such activities will be conducted from an office in Ft. Myers, Florida, serving Ft. Myers, Florida, and the areas surrounding Ft. Myers, Florida. Comments on this application must be received not later than March 22, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Omaha National Corporation*, Omaha, Nebraska (mortgage lending activities; Colorado Springs, Colorado): To engage through its subsidiary, Realbanc, Inc., in mortgage lending activities; including the extension of residential mortgage loans for sale to permanent investors, the extension of construction loans and the performance of local collection and inspection activities related thereto. These activities will be conducted in the State of Colorado. The geographic area to be served includes all the area within the State of Colorado. Comments on this application must be received not later than March 22, 1983.

Board of Governors of the Federal Reserve System, February 22, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-4986 Filed 2-25-83; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council, Meeting

The Consumer Advisory Council will meet on Wednesday, March 16, and Thursday, March 17. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 16 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The March 17 session is expected to begin at 9:00 a.m. and to conclude at 3:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will consider the following topics:

1. *Federal Reserve's Implementation of the Community Reinvestment Act (CRA)*

Discussion of a report from the Council's CRA Review Committee on the effectiveness of the Federal Reserve's implementation of CRA, including community affairs activities, CRA examination and protest procedures, and examiner training in CRA.

2. *Proposal for Revising the Consumer Leasing Act*

Discussion of a legislative proposal drafted by Board staff to revise statutory consumer leasing provisions.

3. *Consumer and Commercial Interest Rates*

Discussion of whether consumer interest rates have moved in the wake of recent declines in prime and commercial rates.

4. *Truth in Savings/Advertising of New Savings Instruments*

Discussion of (1) the merits of either state or federal rules requiring financial institutions to provide disclosures for all time deposits and savings accounts, and (2) whether current advertising rules in Regulation Q are adequate for new savings instruments (like the Money Market Deposit and Super NOW Accounts).

5. *Creditor Remedies*

Discussion of the effect that limitations on creditor remedies may have on the availability of consumer credit and on the number of consumer bankruptcies.

6. *Regulatory update*

Status report on recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Kay Oliver, Secretary, Consumer Advisory Council, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Friday, March 11, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, February 22, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-4990 Filed 2-25-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

March Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of March.

National Advisory Mental Health Council

March 1; 9:30 a.m.

National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20205.

March 2-3

Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857.

Open—March 1; 9:30 a.m.-5:00 p.m.

Closed—Otherwise.

Contact: Ms. Helen W. Garrett Committee Management Officer, Parklawn Building, Room 17C-26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: On March 1, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C Appendix I).

* * * * *

Alcohol Psychosocial Research Review Committee

March 2-4; 9:00 a.m.

Embassy Square Hotel, 2000 N Street, NW., Washington, D.C. 20036.

Open—March 2; 9:00 a.m.-1:30 p.m.

Closed—Otherwise.

Contact: Harvey P. Stein, Ph. D., Parklawn Building, Room 16C-26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6106.

Purpose: The Alcohol Psychosocial Research Review Committee is charged with the initial review of applications for assistance from the National Institute on Alchohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 a.m.-1:30 p.m., March 2, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

* * * * *

Life Course and Prevention Research Review Committee

March 2-4; 9:00 a.m.

The Capitol Hill Hotel, Capitol Hill Conference Room, 200 C Street, SE., Washington, D.C. 20003.

Open—March 2; 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Mrs. Christine Peers, Parklawn Building, Room 9C-08, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1177.

Purpose: The Life Course and Prevention Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., March 2, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

* * * * *

Cognition, Emotion, and Personality Research Review Committee

March 4–6; 9:00 a.m.

Holiday Inn, Georgetown, 2101 Wisconsin Avenue NW., Washington, D.C. 20007.

Open—March 4; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Shirley Maltz, Parklawn Building, Room 9C–26 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The Cognition, Emotion, and Personality Research Review Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the National Institute of Mental Health for assistance of activities in the fields of personality, cognition, emotion and higher mental processes, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., March 4, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

* * * * *

Mental Health Research Education Review Committee

March 9–11; 9:00 a.m.

Sheraton Inn Washington, Northwest, 8727 Colesville Road, Silver Spring, Maryland 20910.

Open—March 9; 1:30–3:00 p.m.

Closed—Otherwise.

Contact: Ms. Emilie Embrey, Parklawn Building, Room 9–101, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3857.

Epidemiologic and Services Research Review Committee

March 14–16; 9:00 a.m.

Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209.

Open—March 14; 9:00–10:00 a.m.

Closed—Otherwise.

Contact: Ms. Gloria Yockelson, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Epidemiologic and Services Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities in the fields of mental health epidemiology, mental health systems research, mental health services development, and evaluation methodology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., March 14, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

* * * * *

Mental Health Small Grant Review Committee

March 23–26; 1:30 p.m.

The Capitol Hill Hotel, Rooms 308 and 408, 200 C Street, SE., Washington, D.C. 20003.

Open—March 23; 1:30–2:30 p.m.

Closed—Otherwise.

Contact: Ms. Virginia Harter, Parklawn Building, Room 9–95, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Mental Health Small Grant Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse for support of research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychiatry, psychological sciences, biological sciences, and epidemiology, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30–2:30 p.m., March 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

* * * * *

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860. NIMH: Mrs. Helen W. Garrett, Committee Management Officer, Room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: February 22, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 83–4937 Filed 2–25–83; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1983.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 6–7, 1983, 1:30 p.m.–5:00 p.m.

Place: Muehlebach Hotel on March 6, Baltimore and Wyandotte at 12th, Kansas City, Missouri 64105; Federal Office Building on March 7, 601 East 12th Street, Kansas City, Missouri 64106. Open for entire meeting.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The meeting will cover opening remarks and introduction of new members, presentation on the National Health Service Corps placement policies and procedures, and a discussion of options for development of the program.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Charlotte Walch, or Mr. Billy Sandlin, National Health Service Corps, Health Resources and Services Administration, Room 6–40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443–2900. Agenda items are subject to change as priorities dictate.

Date: February 10, 1983.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 83–5005 Filed 2–25–83; 8:45 am]

BILLING CODE 4160–15–M

Medical Reimbursements Rates for Fiscal Year 1983; Inpatient and Outpatient Medical Care; Correction

The Reimbursement rates that were published at 48 FR 82, January 3, 1983, are incorrect. The correct rates are:

Inpatient services per day: $272.00 (In Alaska, $358.00)
Outpatient services per visit: $52.00 (In Alaska, $88.00)

Dated: February 18, 1983.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

[FR Doc. 83-4998 Filed 2-25-83; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-83-1206]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submission will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from Davis S. Cristy, Acting Reports Managements Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant Entitlement Grantee Performance Report.

Office: Housing.

Form Number: None.

Frequency of Submission: Annually.

Affected Public: State or Local Gvernments.

Estimated Burden Hours: 147,00.

Status: Reinstatement.

Contact: Bob Duncan, HUD, (202) 755-6306, Robert Neal, OMB, (202) 395-7316.

[Sec. 3707 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)]

Dated: February 16, 1983.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 83-4902 Filed 2-25-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-79470]

Airport Lease; Alaska

February 2, 1983.

Notice is hereby given that pursuant to the Act of May 24, 1928, (49 U.S.C. 211-214) the State of Alaska, Department of Transportation and Public Facilities, has applied for an airport lease for the following land:

Fairbanks Meridian, Alaska

T. 28 N., R. 12 W.,
Within protracted Sec. 9, SE¼ and within protracted Sec. 16, NE¼, SW¼

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707.

Lennie Eubanks,

Chief, Branch of Land Office.

[FR Doc. 83-4813 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. A 17000-Z]

Arizona; Classification of Public Lands for State Indemnity Selection

Correction

In FR Doc. 83-3650, beginning on page 6181, in the issue of Thursday, February 10, 1983, make the following corrections:

1. On page 6182, in the first column, under "T.2N., R.3W," in the second line "2NW¼, SE¼," should read "2NW¼, SW¼,".

2. Also on page 6182, in the first column, under "T.3N., R. 4W.," "W½W½E½," should read "W½, W½E½,".

BILLING CODE 1505-01-M

[OR 11469 (WASH)]

Washington; Termination of Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 82-5522, appearing on page 8865 in the issue of Tuesday, March 2, 1982, correct line 3 of the land description now reading "1,300 feet" to read "1,320 feet" and in the last column under "T.39N., R10E., unsurveyed," correct line 5 to read "Sec. 8, N½, SW¼, N½ SE¼, and"

BILLING CODE 1505-01-M

Realty Action; FLPMA 302 Lease at Camp Lonely, Alaska

The following-described lands have been identified as suitable for lease under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and 43 CFR Part 2920. The subject lands are within the following general legal description:

Umiat Meridian, Alaska

T. 16 N., R. 5 W.,
Sec. 18.
Containing approximately 16 acres.

The highest and best use of these lands is to provide a logistics and support base for energy exploration offshore in the Beaufort Sea and within the National Petroleum Reserve-Alaska. It has been determined that it would be in the public interest to issue a non-competitive lease to Cook Inlet Region,

Inc. The lease would be subject to the following terms and conditions:

1. The lease would be issued for a period of twenty years and is renewable.

2. The lease would be subject to an appraisal for the land use at fair market value and would be reappraised every five years.

3. Any conveyance of the lands will be subject to the lease.

4. The lands will be used for the purposes as applied for. Any additional use, construction, or improvements must be authorized by the Arctic Area Manager.

5. Any conditions requested by the State of Alaska will be incorporated into the stipulations attached to the lease.

6. The applicant will adhere to all mitigating measures and stipulations in the Land Action Decision Document (LADD F-81305).

7. The applicant will also adhere to all terms and conditions set forth in 43 CFR 2920.7.

Copies of the LADD can be reviewed at the Bureau of Land Management, Fairbanks District. For a period of 30 days from the date of this notice, interested parties may submit comments to the Arctic Area Manager, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707. Any adverse comments will be evaulated by the Area Manager. The District Manager shall review the file and arrive at a final decision for the Department of the Interior.

Donald E. Runberg,

Acting District Manager.

[FR Doc. 83-5009 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-84-M

Nevada; Intent To Prepare an Environmental Impact Statement and Wilderness Amendment to the Caliente Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's Las Vegas District (Nevada) is amending the Caliente Resource Area Management Framework Plan to determine which wilderness study areas (WSAs) in the resource area should be recommended as suitable or nonsuitable for wilderness designation. In order to determine the possible impacts of the amendment, an environmental impact statement will be prepared in conformance with the National Environmental Policy Act of 1969. Implementation of the planning amendment will not occur until Congress officially acts on the recommendations developed from the amendment.

The planning amendment and environmental impact statement will be prepared in accordance with the Bureau of Land Management's planning regulations (43 CFR Part 1600). The wilderness study will also utilize the Bureau's Wilderness Study Policy (published in **Federal Register** vol. 47, No. 23/Wednesday, February 3, 1982).

Proposed Issue

The proposed issue for the Caliente Resource Area Management Framework Plan amendment is: Which WSAs or portions of WSAs, if any, within the Caliente Resource Area are suitable for recommendation to Congress for wilderness designation?

Public comment and involvement will be solicited during the identification of issues and development of alternatives and upon publication of the draft amendment and environmental impact statement. The time, dates, and locations of public meetings and hearings, and other public participation opportunities have yet to be determined. News releases will be issued identifying specific meeting places and times.

Five Wilderness Study Areas, totalling 564,512 acres of public lands administered by the Bureau of Land Management in southeastern Nevada, will be studied to determine their suitability for inclusion into the National Wilderness Preservation System. The Wilderness Study Areas under consideration are located in Lincoln County, Nevada.

The following is a listing of those Wilderness Study Areas which will be included in the amendment:

Wilderness study area	Acres
South Pahroc Range (NV-050-0132)	42,455
Grapevine Spdeg (NV-050-0139)	47,169
Meadow Valley Range (NV-050-0156)	185,744
Mormon Mountains (NV-050-0161)	162,887
Delamar Mountains (NV-050-0177)	126,257
Total	564,512

Planning documents delineating existing resource area management and relating to the development of the Management Framework Plan amendment and environmental impact statement will be available for public review at the Caliente Resource Area Office, Caliente, Nevada, during the week of March 7, 1983 from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT:
Jake Brierly, Caliente Resource Area Office, Caliente, NV 89008, (702)-726-3141.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 83-5008 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-84-M

[N-32251]

Nevada; Partial Termination of Proposed Withdrawal

February 17, 1983.

Notice of Proposed withdrawal N-32251 and N-32252 was published as **Federal Register** Document 81-22482 on page 39480 and 39481 of the August 3, 1981 issue.

Bureau Motion sale N-32251 has been cancelled. The following described 1,280 acres in Nye County are affected:

Mount Diablo Meridian, Nevada

T. 10 N., R. 43 E.,
Sec. 10, all;
Sec 11, all.

Upon publication of this notice in the **Federal Register**, the land will be relieved of the segregative effect.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 83-5004 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting Date Correction

The meeting of this Advisory Committee which was announced February 14, 1983 (48 FR 6594), and was originally scheduled for March 1, has been rescheduled for Wednesday, March 2 at 8:00 a.m.

Dated: February 23, 1983.

Robert C. Horton,

Director.

[FR Doc. 83-4682 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-53-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications; Zoological Society of San Diego et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Zoological Society of San Diego, San Diego, CA; PRT 2-10028.

The applicant requests a permit to import one male and five female captive-bred Francois monkeys (*Presbtyis francoisi*) from the Canton Zoo, People's Republic of China, for enhancement of propagation.

Applicant: National Zoological Park, Washington, D.C.; PRT 2–10029.

The applicant requests a permit to import one male and one female captive-bred Manchurian cranes (*Grus japonnensis*) from the Rotterdam Zoo, Netherlands, for enhancement of propagation.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH; PRT 2–10035.

The applicant requests a permit to import two male and two female captive-bred Tasmanian native cats (*Dasyurus viverrinus*) from the Royal Melbourne Zoological Gardens, Victoria, Australia, for enhancement of propagation.

Applicant: Elmer E. Lloyd, Sandy, OR; PRT 2–10058.

The applicant requests a permit to export one male white eared pheasant (*Crossoptilon crossoptilon*) and three male Hawaiian geese (*Branta sandvicensis*) to Harry Hardy, Burnaby, British Columbia for enhancement of propagation.

Applicant: Topeka Zoological Partk, Topeka, KS; PRT 2–10043.

The applicant requests a permit to purchase in interstate commerce two female Bornean orangutans (*Pongo pygmaeus*) from the Yerkes Regional Primate Research Center, Atlanta, Georgia for enhancement of propagation.

Applicant: John S. Applegarth, Albuquerque, NM; PRT 2–10044.

The applicant requests a permit to take four (4) blunt-nosed leopard lizards (*Gambelia (Crotaphytus) silus*) for scientific research.

Applicant: Zoological Society of Cincinnati, Cincinnati, OH; PRT 2–10048.

The applicant requests a permit to import one male captive-bred white-faced gibbon (*Hylobates concolor leucogemys*) from the Royal Zoological Society of Antwerp, Belgium, for enhancement of propagation.

Applicant: Florida State Museum, Gainesville, FL; PRT 2–10082.

The applicant requests a permit to import salvaged specimens of American crocodile (*Crocodylus acutus*) from Haiti for scientific research.

Applicant: Dale R. Thompson, Canyon Country, CA; PRT 2–10052.

The applicant requests a permit to import four male and four female captive-bred Ochre-marked parakeets (*Pyrrhura cruentata*) from Dr. George Smith of Peterborough, England, for enhancement of propagation.

Applicant: George A. Allen, Jr., Salt Lake City, UT; PRT 2–10086.

The applicant requests a permit to import one female captive-bred white-eared pheasant (*Crossoptillon crossoptillon*) from Mr. Harry Hardy, Burnaby, British Columbia, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: February 23, 1983.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-5037 Filed 2-25-83; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

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 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.

Motor Carriers of Property

Notice No. F-240

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 166319 (Sub-1–1TA), filed February 18, 1983. Applicant: DUBOIS CONSTRUCTION CO., INC. Three Mile Bridge Road, P.O. Box 502, Montpelier, VT 05602. Representative: Donald DuBois (same as applicant). *Machinery and machine parts, transportation equipment, those commodities which because of their size or weight require the use of special handling or equipment,* between points in ME, NH, VT, RI, CT, MA, PA, and NY. Supporting shipper(s): Jordan-Milton Machinery, P.O. Box 429, Montpelier, VT 05602; Reynolds & Son, Inc., P.O. Box 380, South Barre, VT 05670; Vermont Drilling & Blasting, P.O. Box 337, Johnson, VT 05656.

MC 166203 (Sub-1–1TA), filed February 10, 1983. Applicant: CUSTOMIZED TRANSPORTATION, INC., 54 Seridan Avenue, Elmira Heights, NY 14093. Representative: Dixie C. Newhouse, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. *Contract carrier:* irregular routes: *(1) Plastic trays, paper and paperboard boxes and cards, including materials, equipment and supplies used in the manufacture, sale and distribution thereof* between Elmira, NY, including its commercial zone, on the one hand, and, on the other, points in ME, MA, CT, PA, NJ, FL, IL, OH, TX, DE, NC and WI, under continuing contract(s) with F. M. Howell & Company of Elmira, NY; *(2) Commodities dealt in by hardware stores,* between points in CT, ME, MD, MA, NH, NJ, OH, PA, VT, WV, IL, IN, DE and NY, under continuing contract(s) with R.K.B. Enterprises Incorporation of Elmira, NY; *(3) Salt and salt products* between White Marsh, MD, Watkins Glen and Lansing, NY, on the one hand, and, on the other, points in the U.S. in and east of WI, IL, KY, TN and MS, under continuing contract(s) with Cargill, Inc. of Minneapolis, MN; and *(4) Canned and bottled juices, frozen juice*

concentrates, canned fruits, canned vegetables, frozen fruits and vegetables between Yates, Ontario and Wayne Counties, NY, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NJ, NY, NC, OH, RI, PA, VT, VA, WV and WI, under continuing contract(s) with Seneca Foods Corporation of Dundee, NY. Supporting shipper(s): F. M. Howell & Co., 79–95 Pennsylvania Ave., Elmira, NY 14902; R.K.B. Enterprises, Inc., 1575 Lake St., Elmira, NY 14901; Cargill, Inc., P.O. Box 150, Watkins Glen, NY 14891; Seneca Foods Corp., 74 Seneca St., Dundee, NY 14837.

MC 120284 (Sub-1–1TA), filed February 17, 1983. Applicant: L. R. TRUCKING, INC., 968 Massachusetts Avenue, Boston, MA 02118. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* irregular routes: *General commodities (except Classes A and B explosives, hazardous waste, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* between all points in the 48 continguous U.S. (except AK and HI), under continuing contract(s) with AAA Cargo Brokers, Inc., Sharon, MA. Supporting shipper: AAA Cargo Brokers, Inc., 36 South Main Street, Sharon, MA 02067.

MC 108194 (Sub-1–2TA), filed February 18, 1983. Applicant: WILLIAM B. MEYER, INC., 60 Long Beach Boulevard, Stratford, CT 06979. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. *Contract carrier:* irregular routes: *Foodstuffs (except those requiring refrigeration)* between Fairfield County, CT, on the one hand, and, on the other, points in ME, MA, NH, NY, RI and CT, under continuing contract(s) with General Mills, Inc., of Minneapolis, MN. Supporting shipper: General Mills, Inc., P.O. Box 1113, Minneapolis, MN 55440.

MC 156859 (Sub-1–3TA), filed February 11, 1983. Applicant: RICE TRANSPORT, INC., 17 Brookwood Road, Stanhope, NJ 07874. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *(1) Picture frame mouldings and picture frames;* and *(2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above,* between points in the U.S. (except AK and HI), under continuing contract(s) with T. I. Moulding, Inc., Brooklyn, NY. Supporting shipper: T. I. Moulding, Inc., 464 Ban Ridge Ave., Brooklyn, NY 11220.

MC 82101 (Sub-1–4TA), filed February 17, 1983. Applicant: WESTWOOD CARTAGE, INC., 62 Everett Street, Westwood, MA 02090. Representative: David M. Marshall, Marshall and Marshall, Sixth Floor, 95 State Street, Springfield, MA 01103. *Contract carrier:* irregular routes: *Such commodities as are dealt in by manufacturers and distributors of food products and hotel and restaurant items,* between Brockton, MA and Queens Village, NY, on the one hand, and, on the other, points in the U.S. east of MN, IA, MO, AR and LA, under continuing contract(s) with Howard Johnson Company, Braintree, MA. Supporting shipper: Howard Johnson Company, 220 Forbes Road, Braintree, MA 02184.

The following applications were filed in region 2. Send protests to: ICC, Fed. Res. Bank Bldg., 101 North 7th St. Rm. 620, Philadelphia, PA 19106.

MC 166139 (Sub-II–1TA), filed February 8, 1983. Applicant: A.W.T. CORP., 2815 N. 17th St., Philadelphia, PA 19132. Representative: Charles M. Rand, 1200 E. Marlton Pike, Barclay House, Suite #7, Cherry Hill, NJ 08034. *Furniture* between points in PA, NJ, NY, DE, VA and VA. Supporting shipper(s): JAL Associates, 2216 E. Allegheny Ave., Phila., PA 19134; Custom Craftsmen, 700 Creek Rd, Bellmawr, NJ 08031; Bernstein Office Machine Co., 2833 Street Rd., Bensalem, PA 19020.

MC 166068 (Sub-II–1TA), filed February 8, 1983. Applicant: A–PLUS TRUCKING, INC., 5506 Northpoint Dr., Cincinnati, OH 45239. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. *General commodities* (except Classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between Cincinnati, OH, on the one hand, and, on the other, points in the U.S. (Except AK & HI) for 270 days. Supporting shipper(s): There are 7 supporting shippers. Their statements may be examined at the Phila. ICC Office.

MC 165552 (Sub-II–1TA), filed January 19, 1983. Applicant: C & L TRANSPORTATION, INC., P.O.B. 339, Orefield, PA 18069. Representative: William J. McCarthy, III, 825 N. 12th St., Allentown, PA 18102. Contract, irregular: *coal and coal products* from points in PA to points MA and RI; and *scrap metals and scrap materials* from points in MA and RI to points in PA, DE, and NJ. Under continuing contract(s) with People Coal Co. and State Line Scrap Co. Supporting shipper(s): Peoples Coal Co., 55 Mill St, Cumberland, RI 02864; State Line Scrap Co., Inc., Bacon St., S. Attleboro, MA 02703.

MC 163509 (Sub-II–3TA), filed February 8, 1983. Applicant: DELTA FREIGHT INC., Box 4, Lower Valley Rd., Parkesburg, PA 19365. Representative: Lynn Hanaway (same address as applicant). *Building materials, and materials and supplies used in the manufacture and distribution of furnances and related products* between points in PA, NJ, NY, OH, MD and Waden County, MN, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, NE, KS, OK, TX. An underlying ETA seeks 120 days authority. Supporting shipper(s): Berger Bros. Company, 805 Pennsylvania Blvd., Feasterville, PA 19047.

MC 166253 (Sub-II–1TA), filed February 15, 1983. Applicant: DIAMOND CAB COMPANY OF ARLINGTON, INC., P.O. Box 2271, Arlington, VA 22202. Representative: Mel P. Booker, Jr., P.O. Box 1281, Old Town Station, Alexandria, VA 22313. *Passengers and their baggage* between points in DE, MD, VA and DC, under continuing contract(s) with Consolidated Rail Corp. of Philadelphia, PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Consolidated Rail Corporation, 1528 Walnut St., Room 501, Phila., PA 19102.

MC 147723 (Sub-II–8TA), filed February 7, 1983. Applicant: E. B. COMPANY, INC., 667 Front St., Berea, OH 44017. Representative: Susan J. Radwan (same as applicant). *Lift trucks; machinery; electrical equipment and components, materials, equipment and supplies used in the manufacture of the above,* between points in OH, MI, PA, NY, IN, FL, CA, OR, on the one hand, and, on the other, points in the U.S. for 270 days. Supporting shipper: Schreck Industries, Inc., 14675 Foltz Industrial Parkway, P.O. Box 36008, Strongsville, OH 44136.

MC 147723 (Sub-II–9–TA), filed February 7, 1983. Applicant: E. B. COMPANY, INC., 667 Front St., Berea, OH 44017. Representative: Susan J. Radwan (same as applicant). *Coal, charcoal; heating equipment and devises; petroleum and petroleum products; bricks, bricketts; paper and paper products; ore and ore products; salt and related products; mining equipment, machinery and equipment, materials and supplies used in the manufacture and distribution of the above commodities,* between points in OH, TX, NM, NY, WV, KY, PA, IL and MI, on the one hand, and, on the other, points in the U.S. for 270 days. Supporting shipper: Welcome Heat, Inc., P.O. Box 16276, Rocky River, OH 44116.

MC 156220 (Sub-II–2TA), filed February 8, 1983. Applicant: G.T.S. TRANSPORT, INC., 2335 Wheatsheaf Lane, Philadelphia, PA 19137. Representative: Edward R. Sutton, 7501 Bustleton Ave., Phila., PA 19152. *General commodities (except Classes A and B explosives, household goods and commodities in bulk)* between points in the U.S. (except AK and HI). Supporting shipper(s): There are nine supporting shippers statements to this application which may be examined at the Phila. Regional office.

MC 138910 (Sub-II–1TA), filed February 15, 1983. Applicant: GLOWATSKY PIGGYBACK SERVICE, INC., P.O. Box 537, Allentown, PA 18103. Representative: Richard A. Carr, 3015 Lindberg Ave., Allentown, PA 18103. *General commodities (except household goods, Classes A and B explosives and commodities in bulk)* between points in DC, DE, MD, NJ, PA, New York, NY and Alexandria, VA. Restricted to shipments having a prior or subsequent movement by rail or water. Supporting shipper(s): Cornucopia Transportation, 112 Oakview Dr, Media, PA; Garden City Transportation, Inc., 900 E. William St., San Jose, CA; Cotter & Co., No. 1 Snowdrift Rd, N. Fogelsville, PA; Continental Shippers Inc., Allentown, PA; Part IV associates, Inc., 580 Germantown Pk., Plymouth Meeting, PA.

MC 161574 (Sub-II–2TA), filed February 14, 1983. Applicant: INTERNATIONAL CONTAINER SERVICES, INC., 5155 Warner Road, Garfield Heights, OH 44125. Representative: Norman J. Philion, III, 1920 N Street NW., Washington, D.C. 20036. General Commodities, (except classes A and B Explosives), between New York, NY; Port Elizabeth, NJ; Philadelphia, PA; Baltimore, MD; Norfolk, VA; and Miami, FL; on the one hand, and, on the other, Pittsburgh, PA, and points in OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 5 supporting shippers. Their statements may be examined in the Phila ICC Office.

MC 143406 (Sub-II–6TA), filed February 14, 1983. Applicant: MICHEL PROPERTIES, INC., Stenersen Lane, Cockeysville, MD 21030. Representative: Walter T. Evans, 4304 East-West Highway, Bethesda, MD 20814. *Household cleaning commodities* from Baltimore and Jessup, MD, to points in CT, MA, NY, PA, RI and VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s) The Procter & Gamble Distributing Co., Box 8126, Trenton, NJ 08650.

MC 135364 (Sub-II–19TA), filed February 14, 1983. Applicant: MORWALL TRUCKING, INC., R.D. #3, Box 76–C, Moscow, PA 18444. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517. Contract, irregular: *Paper, paper products and chemicals and related products,* between Hampden County, MA, on the one hand, and, on the other, points in the U.S. east of MN, IA, KS, OK and TX, under continuing contract(s) with Sulco Public Warehouse. An underlying ETA seeks 120 days authority. Supporting shipper: Sulco Public Warehouse, Springfield, MA 01109.

MC 107012 (Sub-II–266TA), filed February 3, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between points in the U.S., under continuing contract(s) with Union Pacific Railroad Company, Omaha, NE for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Union Pacific Railroad Company, 1416 Dodge Street, Omaha, Ne 68179.

MC 107012 (Sub-II–267TA), filed February 14, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as applicant). Contract, irregular: *General commodities (except classes A & B explosives, commodities in bulk, and household goods as defined by the Commission)* between points in the U.S., under continuing contract(s) with Mohasco Corporation, Atlanta, GA. An underlying ETA seeks 120 days authority. Supporting shipper: Mohasco Corporation, 1755 The Exchange, Atlanta, GA 30339.

MC 107012 (Sub-II–268TA), filed February 16, 1983. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 39 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Contract irregular: *household goods* between points in the US under continuing contract(s) with State Farm Mutual Automobile Insurance Co., Bloomington, IL, for 270 days. Supporting shipper: State Farm Mutual Automobile Insurance Co., 1 State Farm Plaza, Bloomington, IL 61701.

MC 165918 (Sub-II–1TA), filed February 15, 1983. Applicant: OHIO MOTORWAYS TRANSPORTATION, INC., 10679 Lancaster Road SE., Hebron, OH 43025. Representative: Owen B. Katzman, 1828 L Street NW., Suite 1111, Washington, DC 20036. General commodities (except household goods, commodities in bulk, and classes A and B explosives), between Columbus, OH, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MS, NY, NC, OH, OK, PA, SC, TN, TX, VA, and WV for 270 days. An underlying eta seeks 120 days authority. Supporting shipper(s): There are 7 supporting shippers. Their statements may be examined in the Phila ICC Office.

MC 166066 (Sub-II–1TA), filed February 15, 1983. Applicant: REIS TRUCKING, INC., P.O. Box 32, North Bend, OH 45052. Representative: John Alden, 1396 W. Fifth Ave., Columbus, OH. *Asphalt and asphalt products* between the facilities of Koch Asphalt Co. at or near North Bend, OH on the one hand, and, on the other, points in IN and KY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper (s): Koch Asphalt Company, P.O. Box 2256, Wichita, KS 67201.

MC 165333 (Sub-II–1TA), filed February 14, 1983. Applicant: RYAN EXPRESS, INC., 831 Field Club Rd., Fox Chapel, PA 15238. Representative: John J. Connors (same address as applicant). Contract, irregular: *general commodities (excluding Classes A and B explosives, household goods as defined by the Commission and commodities in bulk)* between points in the U.S., under continuing contract (s) with Genco Transportation Service, for 270 days. Supporting shipper(s): Genco Transportation Services, 1200 Lebanon Rd., West Mifflin, PA 15122.

MC 146807 (Sub-II–34TA), filed February 2, 1983. Applicant: S n W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Peter Wolff, 722 Pittston Ave., Scranton, PA 18505. *School, Art and Hobby supplies* between Easton, PA, on the one hand, and, on the other, points in CT, FL, GA, IL, IN, KS, MA, MI, NJ, NY, OH, and RI for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Binney & Smith Inc., P.O. Box 431, 1100 Church Lane, Easton, PA 18042.

MC 166229 (Sub-II–1TA), filed February 14, 1983. Applicant: C. W. SON-SHINE, INC., 66701 Anna Drive, St. Clairsville, OH 43950. Representative: John M. Friedman, 2930 Putnam Ave., P.O. Box 426, Hurricane, WV 25526. *Such Commodities As Are Dealt In Or Used By Department, Discount or Variety Stores,* between points in WV on the one hand, and, on the other, points in the US, except for AK and HI for 270 days. Supporting shipper(s):

Stone & Thomas, 1030 Main St., Wheeling, WV 26003.

MC 161189 (Sub. II–2TA), filed February 15, 1983. Applicant: MALLET'S GATEWAY TERMINAL, INC., Chartier's Industrial Part, 2150 Roswell Dr., Pittsburgh, PA 15205. Representative: WILLIAM J. LAVELLE, ESQ., 2310 Grant Bldg., Pittsburgh, PA 15219. *General commodities, except Classes A and B explosives, household goods as defined by the Commission and commodities in bulk,* between the facilities of Mallet's Gateway Terminal, Inc. located in Allegheny County, PA on the one hand, and, on the other, points in (1) Allegany, Garrett and Washington Counties, MD; (2) Ashland, Ashtabula, Athens, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Delaware, Erie, Fairfield, Franklin, Gallia, Geauga, Guernsey, Harrison, Hocking, Holmes Huron, Jefferson, Knox, Lake, Licking, Lorain, Mahoning, Marion, Medina, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, Vinton, Washington and Wayne Counties, OH; (3) Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington and Westmoreland Counties, PA; and (4) Barbour, Berkeley, Braxton, Brooke, Calhoun, Clay, Doddridge, Gilmer, Grant, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Lewis, Marion, Marshall, Mason, Mineral, Monongalia, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt and Wood Counties, WV. An underlying ETA seeks 120 days authority. Supporting shipper: Mallet's Gateway Terminal, Inc., Chartiers Industrial Park, 2150 Roswell Dr., Pittsburgh, PA 15205.

The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 15735 (Sub-4–57TA), filed February 9, 1983. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill, 2120 S. 25th Avenue, Broadview, IL 60153. *Contract* irregular: household goods and used automobiles between points in the U.S. (including AK but excluding HI) under a continuing contract with Arco Oil and Gas Co. and its subsidiaries of Dallas, TX.

MC 118696 (Sub-4–38TA), filed February 9, 1983. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46234. Representative: John F. Wickes, Jr., Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Contract* irregular: *General commodities* (except household goods, classes A and B explosives and commodities in bulk), between points in the United States (except AK and HI). Restricted to services provided pursuant to contract(s) with Signode Corporation. Supporting Shipper: Signode Corporation, 3610 West Lake Avenue, Glenview, IL.

MC 118776 (Sub-4–10TA), filed February 9, 1983. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Lane, Quincy, IL 62301. Representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105–1961, (816) 221–1464. *Lawnmowers, parts, accessories, grass trimmers, and petroleum lubrication oil,* between Galesburg, IL, Milwaukee, WI, Memphis, TN, and Sardis, MS, on the one hand, and, on the other, all points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Lawn Boy, Division of Outboard Marine Corporation, Monmounth Rd., Galesburg, IL 61401.

MC 120776 (Sub-4–1TA), filed February 9, 1983. Applicant: KRESSER MOTOR SERVICE, INC., 900 East Church Street, Sandwich, IL 60548. Representative: Joel H. Steiner, 135 S. LaSalle Street, Suite 2106, Chicago, IL 60603. *General commodities (except classes A and B explosives, household goods and commodities in bulk),* between points in the United States (except AK and HI) under continuing contract(s) with Kresser Broker Service, Inc. of Sandwich, IL. Supporting shipper: Kresser Broker Service, Inc. 900 East Church Street, Sandwich IL 60548.

MC 145807 (Sub-4–8TA), filed February 7, 1983. Applicant: DERBY TRANSPORT, INC., 609 1st Ave. N., Box 695, Weyburn, Sask., CANADA S4H 1P1. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402. *Silica sand,* between points in Scott County, MN, on the one hand, and, on the other, ports of entry on the International Boundary Line between the U.S. and Canada located in ND and MT. An underlying ETA seeks 120 days authority. Shipper: Minnesota Frac Sand Company, 1101 Snelling Ave. N., St. Paul, MN 55108.

MC 162331 (Sub-4–2TA), filed February 9, 1983. Applicant: MARIANA CORPORATION, P.O. Box 726, New Albany, IN 47150. Representative: John F. Wickes, Jr., Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. *Steel and steel products,* between the facilities of American Builders Supply Company in Louisville, KY, on the one hand, and, on the other, points in the state of IN. Supporting shipper: American Builders Supply Company, P.O. Box 37700, Louisville, KY.

MC 164764 (Sub-4–2TA), filed February 7, 1983. Applicant: WHITEFORD NATIONALEASE, INC., d.b.a. DEDICATED TRUCK SERVICE, 2020 West Sample Street, P.O. Box 76, South Bend, IN 46624. Representative: Andrew K. Light, SCOPELITIS & GARVIN, 1301 Merchants Plaza, Indianapolis, IN 46204 (317) 638–1301. *Contract* irregular: *Rubber and foam products and materials, equipment and supplies utilized in the manufacture thereof,* between LaPorte, IN and Chicago, IL and its commercial zone. Restricted to continuing contract(s) with American Rubber and Plastics Corporation, LaPorte, IN and Recticel Foam, Inc., LaPorte, IN. An underlying ETA seeks 120 days authority. Supporting shippers: American Rubber and Plastics Corporation, LaPorte, IN and Recticel Foam, Inc., LaPorte, IN.

MC 166166 (Sub-4–1TA), filed February 9, 1983. Applicant: DALE JOHNSON TRUCKING, INC., Route 1, Sandwich, IL 60548. Representative: Philip A. Lee, 120 W. Madison St., Suite 618, Chicago, IL 60602. *Foodstuffs,* between Cook and Kane Counties in Illinois on the one hand, and, on the other California and Oregon. Supporting shipper: Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604.

The following applications were filed in Region 5. Send protest to: Cosumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 67234 (Sub-5–47TA), filed February 7, 1983. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, 63105. Contract irregular *General Commodities (except Classes A and B explosives and commodities in bulk)* between points and places in the U.S. (including AK and HI) under continuing contract(s) with ANG Coal Gasification Company, Agent for Great Plains Gasification Associates. Supporting shipper: ANG Coal Gasification Company, Agent for Great Plains Gasification Associates, Detroit, MI.

MC 107010 (Sub-5–1TA), filed February 8, 1983. Applicant: BULK

CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Frozen boxed meat* from Lincoln, NE to points in CA. Supporting shipper: Centennial International, Inc., Lincoln, NE.

MC 148818 (Sub-5-2TA), filed February 7, 1983. Applicant: CARL PRINCE, d.b.a. PRINCE TRUCKING, P.O. Box 37, Cane Hill, AR 72717. Representative: John C. Everett, P.O. Box A, Prairie Grove, AR 72753. *New furniture, cartoned and uncartoned* between points in Faulkner County, AR on the one hand, and, on the other, points in NC, SC, VA, and WV; and between points in Moore County, NC on the one hand, and, on the other, points in FL, GA, and SC. Supporting shipper: Virco Mfg. Corporation, Conway, AR.

MC 155595 (Sub-5-19TA), filed February 8, 1983. Applicant: WRT TRANSPORTATION, INC., 3023 Herbert St., Dallas, TX 75212. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. Contract, Irregular: *General Commodities (except HHG's, A&B explosives)* between points in the U.S. (except AK and HI) under continuing contract with Ralston Purina Co., St. Louis, MO.

MC 162515 (Sub-5-3TA), filed February 7, 1983. Applicant: MIDWESTERN TRUCKING COMPANY, INC., P.O. Box 1240, West Memphis, AR 72301. Representative: Fred W. Johnson, Jr., P.O. Box 1291, Jackson, MS 39205. Contract, Irregular: (1) *Electrical transformers* from Memphis, TN to points in AL, MO, OK, and TX under continuing contract(s) with Magnetic Electric Company, Memphis, TN and; (2) *Steel wire rope* from North Haven, CT to Atlanta, GA, Chicago, IL and Shreveport, LA under continuing contract(s) with Universal Wire Products, Inc., North Haven, CT.

MC 166079 (Sub-5-1TA), filed February 7, 1983. Applicant: ALFRED B. JACKSON, d.b.a. AL'S SAUSAGE COMPANY, 7510 Northwest Blvd., Davenport, IA 52806. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses* between points in Scott and Polk Counties, IA, on the one hand, and, on the other, Chicago, IL. Supporting shippers: (1) Tenderland Beef & Locker, Davenport, IA and (2) Iowa Quality Meats, Ltd., West Des Moines, IA.

MC 166120 (Sub-5-1TA), filed February 8, 1983. Applicant: COMPASS CARRIERS, INC., 1517 East Aurora, Des Moines, IA 50313. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Contract:* Irregular. *General commodities (except Classes A and B explosives, household goods, and commodities in bulk),* between the Des Moines, IA commercial zone, on the one hand, and, on the other, the commercial zones of Kansas City, and St. Louis, MO; Hutchinson and Wichita, KS; Lincoln, NE; Aberdeen, SD; Minneapolis, MN; and Milwaukee, WI. Supporting shipper: Load Locaters Ltd., Des Moines, IA.

MC 166123 (Sub-5-1TA), filed February 8, 1983. Applicant: W. J. PRINCE d.b.a. TEXAS EXPRESS, 7179 Industrial, El Paso, TX 79926. Representative: W. J. Prince (same as applicant). *General Commodities, (except Classes A & B Explosives, Commodities in Bulk and Household Goods)* between El Paso County, TX, on the one hand, and, on the other, points in Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lea, Lincoln, Luna, Otera and Sierra Counties, NM. Supporting shipper(s): 9.

Note.—Applicant will interline.

MC 161825 (Sub-1TA), filed February 11, 1983. Applicant: WELLS WATSON, 2412 South Cooper Street, Arlington, TX 76010. Representative: Clint Oldham, Esq., 623 South Henderson, Suite 200, Fort Worth, TX 76104. *Lumber* from points in Dallas and Fort Worth, TX and their respective commercial zones, to points in TX within a 250-mile radius of Dallas and Fort Worth, restricted to traffic having an immediately prior movement by rail. Supporting shipper(s): Southern Timer Sales & Mfgr. Corp., Arlington, TX; Shannon Bros. Lumber Co., Kennedale, TX; Idaho Timber Corp. of TX, Ft. Worth, TX; Western Hardwoods, Inc., Kennedale, TX.

MC 163128 (Sub-5-2TA), filed February 10, 1983. Applicant: BMC TRANSPORTATION COMPANY, P.O. Box 569, Columbus, NE 68601. Representative: Bradford E. Kistler P.O. Box 82028, Lincoln, NE 68501. *Culverts, road signs, signposts, grader blades,* and *piling* from the commercial zones of Huron and De Smet, SD; Chicago, IL; St. Louis, MO; Pueblo, CO; and Carlisle, PA, to points in NE. Supporting shipper: Midwest Service & Sales Company, Schuyler, NE.

MC 163761 (Sub-5-2TA), filed February 9, 1983. Applicant: PAYTON OIL COMPANY INC. d.b.a. PAYTON TRANSPORTATION COMPANY, 5301 N.E. 10th, Oklahoma City, OK 73111. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Such commodities as are dealt in by retail or discount and retail stores (except commodities in bulk),* between Oklahoma County, OK on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: (11).

MC 164686 (Sub-5-4TA), filed February 10, 1983. Applicant: DANNIE GILDER, INC., Route 1, Whitewater, MO 63785. Representative: Georgia Helderman, Route 1, Box 152, Whitewater, MO 63785. *General Commodities (except classes A and B explosives)* between points in the State of MO on the one hand, and, on the other, points in the U.S. Supporting shipper(s): Missouri Illinois Tractor & Equipment Co. Cape Girardeau, MO; Monroe Glass Co., Cape Girardeau, MO; Jim Wilson Co., Cape Girardeau, MO; Delta Fertilizer Co., Delta, MO.

MC 166164 (Sub-5-1TA), filed February 9, 1983. Applicant: RIDDICK TRUCKING, INC., 3410 Pear Street, St. Joseph, MO 64053. Representative: Stephen G. Newman, P.O. Box 456, Jefferson City, MO 65102. General Commodities (except Class A and B explosives, household goods and commodities in bulk) between points in AR, IA, IL, KS, MI, MN, MO, ND, NE, SD and WI, on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting shipper(s): 12.

MC 166223 (Sub-5-1TA), filed February 11, 1983. Applicant: GERALD L. MULLENIX, R. R. 1, Cincinnati, IA 52549. Representative: Kenneth F. Dudley, P.O. Box 279 Ottumwa, IA 52501. *Clay, Concrete, Glass or Stone Products and Ores and Minerals,* between points in Appanoose County, IA, on the one hand, and, on the other, points in IL, MN, MO, and WI. Supporting shipper: The Carter Waters Corp. Kansas City, MO 64141.

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 166225 (Sub-6-1TA), filed February 11, 1983. Applicant: CALIFORNIA MOTOR TANK LINES, 3704 Mt. Diablo Blvd., Ste. 300, Lafayette, CA. Representative: Bill Anderson (same as applicant). *Bulk and package salad/cooking oil* between points in AZ and CA for 270 days. Supporting shipper: Kraft Industrial Foods Group, 6301 Knott Ave., Buena Park, CA 90622.

MC 113282 (Sub-6-8TA), filed February 15, 1983. Applicant: CEMENT DISTRIBUTORS, INC., 815 Olivia Park Rd., Everett, WA 98204. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055. *Sand and gravel* between points in OR and Seattle, WA for 270 days. Supporting shipper: Lone

Star Industries, Inc. POB 1020, Seattle, WA 98111.

MC 165930 (Sub-6–1TA), filed February 15, 1983. Applicant: COLORADO AIR FREIGHT EXPRESS, INC., 3955 Newport St., Suite B, Denver, CO 80207. Representative: Robert E. Butts (same as applicant). *Contract Carrier*, Irregular routes: *Trucks parts and accessories*, from Denver County, CO to points in NM and WY, for the account of Drive Train Industries, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Drive Train Industries, Inc., 3301 Brighton Blvd., Denver, CO 80216.

MC 160760 (Sub-6–2TA), filed February 11, 1983. Applicant: DAVID L. LORD, d.b.a. DAV-GLO INTERNATIONAL CO. 3065 S. E. Condor, Gresham, OR 97030. Representative: David L. Lord, same address as applicant. *Contract Carrier*, Irregular routes: *Malt Beverages*, from Seattle, WA to St. Helens, OR, for the account of St. Helens Ice & Beverage Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: St. Helens Ice & Beverage Inc., 504 Milton Way, St. Helens, OR 97051.

MC 133294 (Sub-6–1TA), filed February 15, 1983. Applicant: ECONO-LINE EXPRESS, INC., 42600 Boyce Rd., Fremont, CA 94538. Representative: Donald R. Stone (same address as applicant). *General Commodities* (excepting commodities in bulk) between points in AZ, CA, OR, NV, and WA for 270 days. Supporting shippers: There are 6 shippers. Their statements may be examined at the regional office listed above.

MC 163084 (Sub-6–1TA), filed February 15, 1983. Applicant: FIN-A-KEY EXPRESS, INC., P.O. Box 80743, Seattle, WA 98108. Representative: A. H. Nash (same address as applicant). *Contract carrier, irregular routes, spirits, wines and malts* between points in the U.S. under continuing contracts with Washington State Liquor control Board for 270 days. Supporting shipper: Washington State Liquor Control Board, Capital Plaza Bldg., Olympia, WA 95504.

MC 153714 (Sub-6–6TA), filed February 10, 1983. Applicant: FREDDY'S TRUCKING, 2200 S.E. 45th, #49, Hillsboro, OR 97123. Representative: William A. Murray (same as applicant). *General commodities*, between points in CA, WA, OR, Ada County, ID, Salt Lake County, UT, Missoula & Cascade Counties MT & Jefferson, Adams, Arapahoe & Douglas Counties, CO, for 270 days. Supporting shipper: G. I. Joe's, Inc., 9805 Boeckman Rd. Wilsonville, OR 97070.

MC 165997 (Sub-6–1TA), filed February 10, 1983. Applicant: GILTNER, INCORPORATED, Rt. 5, Box 5534, Jerome, ID 83338. Representative: Robert W. Giltner, Jr., Rt. 2, Jerome, ID 83338. *Contract Carrier*, Irregular routes: *Food and related items*, between points in WA, OR, CA, AZ, NV, TX, UT, WI, ID, AND CO for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Swift and Company, 236 Washington St., Twin Falls, ID 83301; Southern Idaho Distributing, 1640 Kimberly Rd., Twin Falls, ID 83301; Twin Falls Beverage, 356 Bridge, Twin Falls, ID 83301; Joseph E. DiGrazia Wholesale Distributing, Inc., 422 7th Street, Wells, NV 89835.

MC 41098 (Sub-6–18TA), filed February 10, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C 20006. *Contract carrier*, irregular routes, *household goods* between points in the U.S. under continuing contract(s) with Miller Brewing Company of Milwaukee, WI for 270 days. Supporting shipper: Miller Brewing Company, 3939 West Highland Boulevard, Milwaukee, WI 53201.

MC 127564, (Sub-6–1TA), filed February 9, 1983. Applicant: GRAYLINE TOURS OF SOUTHERN NEVADA, 1550 Industrial Rd., Las Vegas, NV 89102. Representative: Patricia M. Schnegg, P.O.B. 60545, Los Angeles, CA 90060. *Passengers and their baggage* in special and charter operations between Clark County, NV and Mohave County AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Black Canyon Tours, Inc., P.O.B. 96, Boulder City, NV 89005.

MC 166216 (Sub-6–1TA), filed February 10, 1983. Applicant: GABRUSH TRANSPORT LTD. d.b.a. M & M TRANSPORT, 2021 Dudley St., Saskatoon, Sask. S7M 1K9. Representative: Robert N. Maxwell, P.O.B. 2471, Fargo, ND 58108. *Salt*, from the ports of entry on the International Boundary Line, between the U.S. and Canada, at points in MT and ND to points in AZ, CA, CO, ID, MT, NV, OR, UT, WA, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Superior Cartage Company Ltd., P.O.B. 1641, Saskatoon, Sask. S7K 3R8.

MC 166217 Sub-6–1TA), filed February 10, 1983. Applicant: MANISCALCO BROTHERS, Rt. 2, Box 21, Trinidad, CO 81082. Representative: Phillip Maniscalco (same as applicant). *Contract Carrier*, Irregular routes: *Equipment, machinery, and steel* from Trinidad, CO to points in CO, TX, and NM, for the account of Burlington Northern Railroad and Santa Fe Railway Freight, for 270 days. Supporting shippers: Burlington Northern Railroad, 720 Linden Avenue, Trinidad, CO 81082; and Santa Fe Railway Freight, Freight Depot, Trinidad, CO 81082.

MC 166226 (Sub-61–1TA), filed February 11, 1983. Applicant: MONTANA TRAVEL, INC. d.b.a. MONTANA TRAVEL/SPECIAL TRAFFIC CORPORATION, P.O.B. 459, Bozeman, MT 59715. Representative: Audrey O'Connell (Same address as applicant). *Passengers and their baggage* in special and charter operations, between points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Montana Travel, Inc., P.O.B. 459, Bozeman, MT 59715.

MC 165815 (Sub-6–1TA), filed February 15, 1983. Applicant: PACESETTER TRUCKING INC., P.O.B. 1757, Stockton, CA 95201. Representative: Joseph R. Fallabel (same as applicant). *Contract Carrier*, Irregular routes: *Food and related products*, from Stockton, CA to points in the U.S. for the account of Custom Warehousing Inc. for 270 days. Supporting shipper: Custom Warehousing Inc., 1203 N. Gertrude Ave., Stockton, CA.

MC 144902 (Sub-6–2TA), filed February 15, 1983. Applicant: RUDY LEBLANC, d.b.a. RULE TRUCKING COMPANY, Drawer 609, Miles City, MT 59301. Representative: Charles A. Murray, Jr., 2822 Third Ave. N, Billings, MT 59101. *Malt beverages* from Tumwater, WA to points in MT for 270 days. Supporting shippers: Dunham Distributing, Inc., Box 30193, Billings, MT 59107; Glendive Coca Cola Bottling Co., Inc., Box 1049, Glendive, MT 59330; M & C Beverage, Inc., Box 1181, Miles City, MT, 59301; and Osen Distributing Inc., Box 148, Glasgow, MT 59230.

MC 136818 (Sub-6–31TA), filed February 15, 1983. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 5601 W. Mohave, Phoenix, AZ 85031. Representative: Donald E. Fernaays, 2619 N. 50th Pl., Phoenix, AZ 85008. *Building materials*, between Stephens, AR and Ennis, TX, on the one hand, and, on the other points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Elk Corporation of Texas, P.O. Box 500, Ennis, TX 75119.

MC 136818 (Sub-6–32TA), filed: February 15, 1983. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 5601 W. Mohave, Phoenix, AZ 85031. Representative: Donald E. Fernaays, 2619 N. 50th Pl. Phoenix, AZ 85008.

Metal products, between Jewett, TX and points in the U.S., except AK, HI, AZ, CA, CO, ID, KS, MO, MT, NB, NM, OK, OR, TX, UT, WA, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Nucor Steel, P.O. Box 126, Jewett, TX 75846.

MC 166218 (Sub-6-1TA), filed February 10, 1983. Applicant: WESTERN TRAVEL PLAZA, INC., 360 Post St., San Francisco, CA 94108. Representative: Steven G. Teraoka, 601 Montgomery St., San Francisco, CA 94111. *Passengers and their baggage* in special and charter operations between CA and NV for 270 days. Supporting shipper(s): JAPAN TRAVEL BUREAU INTERNATIONAL, INC., 360 Post St., San Francisco, CA 94108.

MC 152250 (Sub-6-5TA), filed February 11, 1983. Applicant: WHITE TRANSPORT, INC., 133 Canfield Street, Sheridan, WY 82801. Representative: Charles A. Murray, Jr., 2822 Third Ave. N, Billings, MT 59101. *Malt Beverages* from Tumwater, WA, to Sheridan, WY for 270 days. Supporting shipper: Big Horn Beverages, Inc., P.O. Box 6063, Sheridan, WY 82801.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-4996 Filed 2-25-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

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 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 reconsideration; 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 CFR 1181.4 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 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 20 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.

Agatha L. Mergenovich,

Secretary.

Volume No. OP1-FC-66

For status, please call Team 1 at 202-275-7992.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC-81203. By decision of February 17, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to FERNUNG-JAMES HORSE VANS, INC. of Lexington, KY of Certificate No. MC-162650, issued December 8, 1982 to TAYLOR MADE HORSE COMPANY, INC., of Chouteaux, OK, authorizing the transportation of horses, between points in the United States (except Alaska and Hawaii). Applicants' representative: Joseph G. Dail, Jr., 6810 Fleetwood Road, P.O. Box LL, McLean, VA 22101.

Volume No. OP1-FC-67

For status, please call Team 1 at 202-275-7992.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-81014. By decision of February 15, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3 approved the transfer to E.L.W. FREIGHT CARRIERS, INC., New York, NY, of Certificate Nos. MC-26001 (Sub-Nos. 1, 12, 13, 14, and 15), issued August 29, 1957, April 8, 1958, January 13, 1966, January 23, 1967, and March 31, 1982, respectively, to AMERICAN FREIGHTWAYS CO., INC. (DEBTOR-IN-POSSESSION), New York, NY, authorizing the transportation (A) over regular routes, of *general commodities* with exceptions, between named points in NY, (B) over irregular routes, of (1) *general commodities*, with exceptions, (a) radially between specified NJ counties, and points in two NY counties, (b) radially between (i) New York, NY, and South Kearny, NJ, and points in 20 NY counties, and (ii) New York, NY, and points in NJ, NY, CT, and PA, (2) *household goods*, between specified NY counties, (3) *lubricating oil*, in drums and packages, *canned goods*, *new furniture and household furnishings*, from and to eight named NY counties, (4) *paper and paper products*, between Onondaga County, NY, and points in NY, NJ, CT, and PA, (5) *electronic products*, between points in two PA counties, three NY counties, and points in NY, NJ, CT, and PA, (6) *iron compound and machinery*, between points in New Haven County, CT, and points in NJ, CT, and PA, (7) *safes and cabinets*, between Monroe County, NY, and points in NY, NJ, CT, and PA, and (8) *steel products*, between Monroe County, NY, Delaware County, PA, and points in NY, NJ, CT, and PA. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048.

Note.—Authority in (4) through (8) above is radial. Transferee is not a carrier. An application for temporary authority has been filed.

Volume No. OP2-FC-075

For status, please call Team 2 at 202-275-7251.

By the Commission, Review Board No. 3, members Krock, Joyce, and Dowell.

MC-FC-81121. By decision of February 16, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 3, approved the transfer to GUY ROBERT d.b.a. GUY ROBERT, ENRG., ST. JEAN-SUR-RICHELIEU, Quebec, Canada, of authority issued to PEARL ET JACQUES ROBERT, ENRG. (a partnership), St. Jean, Quebec, Canada, in Permit No. MC-142973 (Sub-No. 1), issued May 15, 1978, authorizing the transportation of small laboratory animals, between ports of entry on the international boundary line between the U.S. and Canada at or near Highgate Springs, VT and Champlain, NY, on the one hand, and, on the other, Wilmington, MA, under continuing contract(s) with Canadian Breeding Farm & Laboratories, Ltd., of St. Constant, Quebec, Canada—restricted to the transportation of shipments originating at or destined to St. Constant, Quebec, Canada. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, for transferee and transferor.

[FR Doc. 83-4992 Filed 2-25-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of Motor Common Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not 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 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.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions 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 sufficent opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes 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." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 4 at (202) 275–7669.

Volume No. OP4–098

Decided: February 18, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 106207 (Sub-21), filed February 8, 1983. Applicant: NEW YORK–KEANSBURG–LONG BRANCH BUS CO., INC., 50 Highway 30, Leonardo, NJ 07730. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022, (212) 759–3700. Over regular routes, transporting *passengers*, between Ridgefield, NJ, and New York, NY, from the Vince Lombardi Parking area on the New Jersey Turnpike and Interstate Hwy 95 in Ridgefield, then south over Interstate Hwy 95 to junction Interstate Hwy 495, then east over Interstate Hwy 495 to the entrance of Lincoln Tunnel, then through the Lincoln Tunnel to New York, NY and return over the same routes, serving all intermediate points, including Port Authority Terminal and World Trade Center, New York, NY.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce.

MC 147286 (Sub-7), filed February 10, 1983. Applicant: A&L TRUCKING, INC., P.O. Box 103, Rocky Face, GA 30740. Representative: Eric Meierhoefer, 915 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND.

MC 150187 (Sub-6), filed February 11, 1983. Applicant: D & L TRUCKING SERVICES, INC., 1103 S. Clark Blvd., Clarksville, IN 47130. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, (502) 589–5400. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between those points in the U.S. (except AK and HI).

MC 151847 (Sub-2), filed February 11, 1983. Applicant: J. P. HAMILTON, JR., P.O. Box 832, Denton, NC 27239. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168, (703) 629–2818. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Rowan County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *metal products*, between points in Mecklenburg County, NC, on the one hand, and, on the other, points in AL, AR, DE, FL, GA, KY, LA, MD, MS, NJ, OH, PA, SC, TN, TX, VA, WV, and DC.

MC 159777, filed January 24, 1983. Applicant: CAR-DEL, INC., d.b.a.

AABCO, INC., Sacramento, CA 95816. Representative: John F. Parks, III (same address as applicant), (916) 920–8430. Transporting *such commodities* as are dealt in or used by mail order houses, between points in the U.S., under continuing contract(s) with Spiegel's Corporation, of Oakbrook, IL.

MC 166257, filed February 14, 1983. Applicant: J. W. GRICH MILLWRIGHT SERVICE, INC., 230 Rowe Ave., Milford, CT 06460. Representative: Palmer S. McGee, Jr., One Constitution Plaza, Hartford, CT 06103, (203) 278–1330. Transporting *machinery, metal products,* and *lumber and wood products,* between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–66

Decided: February 17, 1983.

By the Commission, Review Board No. 1. Members Parker, Chandler, and Fortier.

MC 160688, filed January 27, 1983. Applicant: THE ADELPHIA AGENCY, P.O. Box 9079, Lester, PA 19113. Representative: William J. Adel, 1500 Locust St., Philadelphia, PA 19106, (215) 744–0500. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with The Franklin Mint, of Franklin Center, PA, and GTE Telenet, Inc., of Mt. Laurel, NJ.

Volume No. OP5–68

Decided: February 17, 1983.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

MC 59629 (Sub-1), filed January 31, 1983. Applicant: JACK ADAMS TRUCKING COMPANY, 6600 S.W. 29th Street, P.O. Box 83167, Oklahoma City, OK 73148. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 North Classen Boulevard, Oklahoma City, OK 73118, (405) 848–7946. Transporting (1) *building materials* and (2) *oilfield commodities,* between points in OK, on the one hand, and, on the other, points in AR, CA, CO, ID, IA, KS, KY, LA, MO, MS, MT, NE, ND, NM, OK, OR, SD, TX, UT, WA and WY.

MC 124949 (Sub-7), filed February 2, 1983. Applicant: HI-LINE TRUCKING, INC., P.O. Box 628, Sidney, MT 59270. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Ten South Fifth St., Minneapolis, MN 55402, (612) 340–0808. Transporting *Mercer commodities,* between points in AZ, CA, CO, ID, KS, MI, MT, NE, NV, NM, ND, OR, SD, UT, WA, and WY.

MC 145408 (Sub-6), filed January 26, 1983. Applicant: WILLIAMS CARTAGE COMPANY, INC., P.O. Box 897, Hartsville, SC 29550. Representative: Robert L. McGeorge, 1000 Potomac Street NW., Suite 501, Washington, DC 20007, (202) 965–6670. Transporting *general commodities* (except classses A and B explosives), (1) between points in ME, NH, VT, NY, MA, RI, CT, NJ, DE, PA, MD, VA, WV, NC, SC, GA, FL, AL, TN, KY, OH, MI, IN, IL, WI, MN, IA, MO, AR, TX, LA, MS, and DC, and (2) between points in the states in (1) above, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145728 (Sub-5), filed January 28, 1983. Applicant: VISALIA FREIGHT LINES, INC., P.O. Box 3181, Visalia, CA 93277. Representative: Owen B. Katzman, 1828 L Street, NW., Suite 1111, Washington, DC 20036, 202–822–8200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Allied Express of San Francisco, CA.

MC 149389 (Sub-6), filed January 31, 1983. Applicant: DELIVERY SERVICE CORPORATION, P.O. Box 4448, Dearborn, MI 48126. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685–0801, 616–941–5313. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151878 (Sub-9), filed February 1, 1983. Applicant: THREE WAY CORPORATION, 1120 Karlstad Dr., Sunnyvale, CA 94086. Representative: Charles H. White, Jr., 1019 19th Street NW., Suite 800, Washington, DC 20036, 202–785–3420. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in the U.S. under continuing contract(s) with Rapicom, Inc., of Fairfield, NJ.

MC 162239 (Sub-1), filed February 1, 1983. Applicant: SALEM CARRIERS, INC., 245 Charlois Blvd., Winston-Salem, NC 27103. Representative: Steven J. Kalish, 1750 Pennsylvania Avenue NW., Washington, DC 20006, (202) 393–5710. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 162698 (Sub-2), filed January 25, 1983. Applicant: ARTHUR VANDERLINDEN AND ROY VANDERLINDEN, d.b.a. RAPCO DISTRIBUTING COMPANY, 3984 S. 500 W., Salt Lake City, UT 84107. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt Lake City, UT 84111, (801) 531–1300. Transporting (1) *nonmetallic minerals* and (2) *clay, concrete, glass and stone products,* between points in the U.S. Except AK and HI), under continuing contract(s) with All Minerals Corporation of Murray, UT.

MC 163689 (Sub-1), filed January 28, 1983. Applicant: BFI, INC., 7909 SW Nimbus, Beaverton, OR 97005. Representative: John G. McLaughlin, 1600 One Main Pl., 101 SW Main, Portland, OR 97204, 503–224–5525. Transporting *bulk commodities,* between points in MT, NV, UT, CO, WY, CA, AZ, OR, WA, ID, NM, and NE.

MC 165039 (Sub-1), filed January 28, 1983. Applicant: CFI TRANSPORT, INC. P.O. Box 40 Valdese, NC 28690. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, 704–372–6730. Transporting *general commodities,* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI) under continuing contract(s) with Lowe's Companies, Inc., of North Wilkesboro, NC.

MC 166009, filed, February 1, 1983. Applicant: CARATINI TRUCKING, INC., P.O. Box 1941, Bridgeview, IL 60457. Representative: Irwin D. Rozner, 134 North LaSalle Street, Chicago, IL 60602, (312) 782–6937. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, on the one hand, and, on the other, points in IN, WI, and MI.

MC 166019, filed January 31, 1983. Applicant: THREE RIVERS TRUCKING, INC., P.O. Box 965, Paris, TN 38242. Representative: Michael F. Morrone, 1150 17th Street NW., Suite 1000, Washington, DC 20036, 202–457–1124. Transporting *clay,* between points in the U.S. (except AK and HI) under continuing contract(s) with H.C. Spinks Clay Company, Inc., and Kentucky Tennessee Clay Co., both of Paris, TN and Cyprus Industrial Minerals Co. of Gleason, TN.

MC 166029, filed January 28, 1983. Applicant: STAN'S FEED & GRAIN, INC., P.O. Box 96, Alpena, SD 57312. Representative: Stanley Kopfmann,

(same address as applicant), 605–849–3252. Transporting *fertilizer, coal, feed and feed ingredients*, between points in MN, NE, ND, and IA, on the one hand, and, on the other, points in SD.

Volume No. OP5–71

Decided: February 17, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 128469 (Sub-8), filed December 13, 1982. Applicant: A & A TRANSFER & STORAGE, INC., 113 Hollywood Blvd., N.W., Fort Walton Beach, FL 32549. Representative: David Earl Tinker, 1000 Connecticut Avenue NW., Suite 1112, Washington, DC 20036–5391, 202–887–5868. Transporting *household goods*, and *furniture and fixtures*, between points in the U.S. (except ND and MT).

MC 154569 (Sub-5), filed January 17, 1983. Applicant: S.T.C. TRUCKING CO. INC., P.O. Box C, Corriganville, MD 20524. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting *salt*, between points in Washington County, MD, on the one hand, and, on the other, points in WV, VA, PA, and DC.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–4994 Filed 2–25–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

In the matter of Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers; (fitness only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These 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.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not 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, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 becomes 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." Please direct status inquiries to Team Four at (202) 275–7669.

Volume No. OP4–099

Decided: February 18, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 1137 (Sub-3), filed February 7, 1983. Applicant: ROLLO TRANSIT CORPORATION, 401 Lake Ave., Asbury Park, NJ 07712. Representative: Edward F. Bowes, P.O. Box Y, Roseland, NJ 07068, (201) 992–2200. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 106207 (Sub-20), filed February 7, 1983. Applicant: NEW YORK-KEANSBURG-LONG BRANCH BUS CO., INC., 50 Highway 36, Leonardo, NJ 07730. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022, (212) 759–3700. Over regular routes, transporting *passengers*, between Freehold, NJ, and World Trade Center, New York, NY from Freehold, at George Street and NJ Hwy 33, then west over NJ Hwy 33 to the Freehold Circle at Intersection of U.S. Hwy 9, then north over U.S. Hwy 9 to Garden State Parkway, then north over Garden State Parkway to New Jersey Turnpike, then over the New Jersey Turnpike to Pulaski Skyway, then over the Pulaski Skyway to the Holland Tunnel, then across the Hudson River to the Borough of Manhattan, New York, NY, then over city streets to the World Trade Center, New York, NY, and return over the same routes, serving all intermediate points.

Note.—Applicant seeks to serve a community not regularly served by an ICC authorized motor common carrier of passengers.

MC 166116, filed February 7, 1983. Applicant: QUALITY TRANSPORTATION BROKERS, INCORPORATED, 234 Fifth Ave., New York, NY 10001. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835–4411. Transporter of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166236, filed February 11, 1983. Applicant: GOOD NEWS TRAVEL, INCORPORATED, Rt 4, Box 316, Easley,

SC 29640. Representative: John Tribble (same address as applicant), (803) 855–3506. Transporting *passengers*, in charter and special operations, beginning and ending at points in TN, SC, NC and GA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 166237, filed February 11, 1983. Applicant: W. J. PRINCE, d.b.a. TEXAS BROKERAGE COMPANY, 7179 Industrial, El Paso, TX 79926. Representative: W. J. Prince (same address as applicant), (915) 598–5992. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 166247, filed February 11, 1983. Applicant: CAYETANO'S TOUR (CHARTER) LINE, INC., 12402 Farlow, Hawaiian Gardens, CA 90716. Representative: Mildred Cayetano (same address as applicant), (213) 860–0654. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166256, filed February 15, 1983. Applicant: W. F. HANKINS, d.b.a. HANKOMA FARMS, Route 2, Box 251, Okmulgee, OK 74447. Representative: W. F. Hankins (same address as applicant), (918) 733–4136. 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).

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–69

Decided: February 17, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 56409 (Sub-19), filed February 2, 1983. Applicant: MAJOR TRANSPORT, INC., P.O. Box 204, Palmyra, WI 53156. Representative: Edward A. Lampsa, Jr. (same address as applicant), (414) 495–2111. 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., and (2) as a *broker* of *general commodities* (except household goods), between points in the United States (except AK and HI).

MC 165979, filed January 28, 1983. Applicant: IMPORT DISTRIBUTION SYSTEMS, INC., 1041 E. 230th Street, Carson, CA 90745. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5500. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either (1) state that a petition has been filed under 49 U.S.C. 11343(e) seeking an exemption from the requirements of 49 U.S.C 11343, (2) file an application under 49 U.S.C. 11343(A), or (3) 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 this filing to Team 5, Room 2414.

MC 165988, filed January 31, 1983. Applicant: CORAM BUS SERVICE, INC., P.O. Box 407, Coram, NY 11727. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301) 840–8565. Transporting *passengers*, in charter and special operations, between points in the United States (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 166049, filed February 1, 1983. Applicant: BO-MAR TRANSPORTATION, INC., Summer St., RFD #2, Box 376, Lisbon Falls, ME 04252. Representative: Michael Sayer, Five Maple St., P.O. Box D, Lisbon Falls, ME 04252, 207–353–9366. Transporting *passengers* in charter and special operations, beginning and ending at points in ME, and extending to those points in the U.S. in and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the eastern boundary of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP5–70

Decided: February 17, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 23558 (Sub-4), filed February 1, 1983. Applicant: STRATFORD BUS LINE, INC., 70 Chestnut Ave., Stratford, CT 06497. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, 203–728–0700. (1) Transporting *passengers* in charter and special operations, between points in the U.S. (except AK and HI); (2) transporting *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).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–4985 Filed 2–25–83; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-134)]

Rail Carriers; Burlington Northern Railroad Company—Abandonment—in Spokane County, WA; Findings

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 14.83 mile rail line between Spring Valley (milepost 40.00) and Mt. Hope (milepost 25.17) in Spokane County, WA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27 (formerly 49 CFR 1121.38).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–4991 Filed 2–25–83; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 347 (Sub-1)]

Coal Rate Guidelines, Nationwide

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed policy

SUMMARY: The Commission is proposing a maximum rail rate policy applicable to captive coal traffic. Under the proposed "constrained market pricing" approach, rail carriers' pricing of market dominant coal traffic would be subject to four

upward constraints. First, a coal shipper could not be charged more than the "stand-alone cost" of serving its traffic. Second, captive shippers would not be required to bear the cost of obvious management inefficiencies. Third, carriers would generally not be permitted to increase their rates on captive coal traffic by more than 15 percent in a single year (after allowing for inflation). Fourth, until a rail carrier achieves revenue adequacy, it would be free to adjust its rates unless it violates one of the three constraints previously listed.

COMMENTS: Comments on this proposed policy should be submitted, within 60 days, to the Interstate Commerce Commission, 12th St. and Constitution Ave. NW., Washington, D.C. 20423.

ADDRESS: Copies of the full decision may be obtained by contacting: Office of the Secretary, 12th and Constitution Avenue, NW., Washington, D.C. 20423; (202) 275–7428.

FOR FURTHER INFORMATION CONTACT:

Ronald S. Young, (202) 275–7565,or Leslie J. Selzer, (202) 275–7626.

SUPPLEMENTARY INFORMATION: The Commission's decision in No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157 (1983), and the changes that will be proposed shorly in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, may have a substantial effect on the maximum rate policy proposed in this proceeding.

Decided: February 8, 1983.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioners Sterrett and Andre dissented with separate expressions. Vice Chairman Gilliam did not participate.

Agatha L. Mergenovich

Secretary

Vice Chairman Sterrett, Dissenting

I am unconvinced that this proposal offers a satisfactory method for meeting what is perhaps the Commission's most important responsibility—determining the justness and reasonableness of railroad rates for captive traffic. In this regard, the importance of this proceeding should be emphasized at the outset. Whatever rate guidelines we ultimately adopt for captive coal traffic are extremely likely to be the rate guidelines we will adopt for all rail captive traffic.

There are aspects of this proposed which I believe have economic or regulatory merit. For example, it appears to me that the concept of stand alone cost as a ceiling on rates makes economic sense. Similarly, a reasonable phase-in of rate increases would seem appropriate. The consideration of management factors in determining the reasonableness of rates is also important to ensure that captive shippers are not forced to subsidize railroad inefficiency.

However, I question whether the Commission should devise what is essentially a mathematical, objective formula for application to the subjective rate standard contained in the statute. I question whether promulgation of this proposal would result in pricing which is consistent with sound transportation policy. I question whether this proposal is fair to either shippers or carriers.

With respect to this particular proposal, my greates concerns lie with the use of the concept of revenue adequacy as a constraint on maximum rates. While the Commission is required under the Interstate Commertce Act to assist the railroads in attaining revenue adequacy, the proposed guideline turns the revenue adequacy concept on its head, changing it from a positive objective to a negative consequence.

There is little direct economic relationship between an overall level of revenue adequacy and the reasonableness of the rate charged any particular shipper. Put another way, revenue adequacy may be one consideration as to whether a particular rate is just and reasonable, but it should not be dispositive of the issue.

The imposition of a revenue adequacy constraint on rates would tend to promote economic inefficiency. Captive shippers being served by revenue-adequate carriers whose rates on particular traffic are artificially low as a consequence would eventually suffer, since there would be no incentive for the carriers to perform more efficiently in serving those shippers.

Finally, the revenue adequacy constraint could create more administrative problems than it would solve. For example, application of the constraint would be discriminatory because some captive shippers whose rates were increased *prior* to the carrier achieving revenue adequacy could, in some instances, be paying much more for comparable service being provided other shippers whose lower rates then would be effectively frozen. In addition, if it were determined that a carrier had achieved revenue adequacy, the Commission would be faced with the problem of deciding which existing rates would have to be reduced so that the carrier did not exceed revenue adequacy.

In sum, the proposed guidelines constitute only a starting point for determining what the Commission should do in this area. Moreover, I am concerned that this proposal would convert revenue adequacy from a Congressionally mandated positive goal to a Commission-imposed negative consequence having little economic rationale.

Commissioner Andre, Dissenting

The Commission is faced with a serious problem regarding railroad pricing for "captive" shippers. Past decisions of this Commission and the appellate courts have impeded rational pricing, contributing to a decline in the transportation network. The Staggers Act represents an opportunity to undo these errors, and this proceeding, Ex Parte 347 (Sub-No. 1), is intended to make use of that opportunity. To the extent that it does so, primarily by underscoring the importance of revenue adequacy for the rail industry and adopting the use of stand-alone costs as an explanatory tool supporting rational pricing, the proceeding is on the right track.

Nevertheless, I do not approve of the issuance of these rules in their present form. The proposals, even though they are only proposals, represent a continuing misapprehension on the part of this Commission about the likelihood of irrational rail pricing. Thus, the rules propose four separate constraints on maximum rates: (1) Stand-alone costs, (2) regulatory scrutiny of operational efficiency, (3) phased increases and (4) heightened scrutiny of rates for revenue adequate carriers. The combined practical effect of these constraints will be more of the same—distorted prices, misguided investments and reliance on regulatory solutions to problems that really can only be solved in the marketplace. While the proposed rules give the appearance of setting standards that will determine reasonable rates, there is necessarily a wide degree of uncertainty and latitude in their application. So much so that the actual determination of any particular rate will be strongly influenced by the presentation of "evidence" and will have only a remote chance of approximating and economically efficient and rational price.

I believe that the Commission should have done no more here than announce its willingness to accept stand-alone costs as one persuasive, but not exclusive, basis for concluding that rates have not risen above the level at which Congress intended some continued protection for captive shippers. I take particular exception to the proposition, however veiled, that profitable railroads

will be treated differently from those whose illness is apparent. I cannot see how any such additional scrutiny can be justified, but I can, with some certainty, predict that if that is the approach taken by the Commission, adequate capital will be as hard to come by in the future as it has in the past. Further, the threat of some limit on total system profitability may diminish managements' willingness to make difficult cost-cutting decisions. Carriers approaching the limit may become less concerned with their labor and factor costs. Indeed history even suggests that we could anticipate reluctance to eliminate sub-optimal investments, with twin results of increasing the total profit permitted by the regulatory regime but reducing the efficiency of the rail system. Consequently, I think that where the stand-alone cost standard or some such other rate-specific methodology substantiates the reasonableness of a rate, overall profitability should not be a bar a rational pricing.

[FR Doc 83-4997 Filed 2-25-83; 8:45 am]
BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Combined Meeting of the Clinch River Breeder Reactor (CRBR) Subcommittee/Working Group on Structures and Materials; Meeting

The Combined Meeting of the ACRS Clinch River Breeder Reactor (CRBR) Subcommittee/Working Group on Structures and Materials will hold a meeting on March 16 and 17, 1983, Room 1046, 1717 H Street NW., Washington, DC. The Subcommittee/Working Group will continue their review of the application of the Department of Energy for a permit to construct the CRBR.

In accordance with the procedures outlined in the Federal Register on October 1, 1982 (47 FR 43474), 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 Cognizant 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 except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. (Sunshine Act Exemption 4.) One or more closed sessions may be necessary to discuss such information. To the extent practicable, these close sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 16, 1983—8:30 a.m. until the conclusion of business
Thursday, March 17, 1983—8:30 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, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Department of Energy, 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, Mr. Paul Boehnert or Mr. Anthony Capucci (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: February 23, 1983.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 83-5027 Filed 2-25-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 76 to Provisional Operating License No. DPR-20, to Consumers Power Company (the licensee), which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment approves a change in testing frequency of emergency lighting inside containment.

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 this action 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 January 24, 1983, (2) Amendment No. 76 to License No. DPR-20, and (3) the Commission's letter of transmittal which contains its evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, D.C. 20555 and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. 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 February 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-5018 Filed 2-25-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-155 OLA (Spent Fuel Pool Modification)]

Consumers Power Co. (Big Rock Point Nuclear Plant); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of February 17, 1983, oral argument on the appeal of Consumers Power Company from the Licensing Board's October 29, 1982, partial initial decision (concerning the neutron multiplication factor) in this spent fuel

pool expansion proceeding will be heard at *9:30 a.m., on Thursday, March 24, 1983*, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: February 22, 1983.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 83-5019 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Duke Power Co.; Availability of Safety Evaluation Report for the Catawba Nuclear Station, Units 1 and 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina. Notice of receipt of Duke Power Company's application for a facility operating license for Catawba Nuclear Station, Units 1 and 2, was published in the Federal Register on June 25, 1981 (46 FR 32974).

The report (Document No. NUREG-0954) is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the York County Library, 325 South Oakland Avenue, Rock Hill, South Carolina 29730. Copies may be purchased at current rates directly from NRC by sending check or money order, payable to Superintendent of Documents, to Director, Division of Technical Information and Document Control, U.S. NRC, Washington, D.C. 20555. GPO Deposit Account holders may charge their orders by calling (301) 492-9530. Copies are also available for purchase through the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 22nd day of February 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-5020 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corporation and Jersey Central Power and Light Company Systematic Evaluation Program; Availability of Final Integrated Plant Safety Assessment Report for the Oyster Creek Nuclear Generating Station

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) has published its Final Integrated Plant Safety Assessment Report (IPSAR) (NUREG-0822) related to the GPU Nuclear Corporation and Jersey Central Power and Light Company's (licensee) Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The Systematic Evaluation Program (SEP) was initiated by the NRC to review the design of older operating nuclear reactor plants to reconfirm and document their safety. This report documents the review completed under the Systematic Evaluation Program for the Oyster Creek plant. Areas in the report identified as requiring further analysis or evaluation and required modifications for which design descriptions have not yet been provided by the licensee to the NRC will be reviewed as part of the operating license conversion review. Supplements to the Final IPSAR will be issued addressing items requiring further analysis and review. The review has provided for: (1) An assessment of the significance of differences between current technical positions on selected safety issues and those that existed when the Oyster Creek plant was licensed, (2) a basis for deciding on how these differences should be resolved in an integrated plant review, and (3) a documented evaluation of plant safety when all supplements to the IPSAR and the Safety Evaluation report for converting the license from a provisional to a full-term licensee have been issued. Equipment and procedural changes have been identified as a result of the review. The report also addresses the comments and recommendations made by the Advisory Committee on Reactor Safeguards (ACRS) in connection with its review of the Draft Report, issued in September 1982. These comments and recommendations, as contained in a report by the ACRS dated November 9, 1982, and the NRC staff's related response are included in Appendix H of this report.

The final IPSAR and its supplements will form part of the bases for considering the conversion of the existing provisional operating license to a full-term operating license.

Pursuant to 10 CFR 50.71(e)(3)(ii), the licensee is required within 24 months after receipt of the letter dated February 9, 1983 from the Director of the Office of Nuclear Reactor Regulation to the licensee transmitting the Final IPSAR, to file a complete Final Safety Analysis Report (FSAR), which is up to date as of a maximum of six months prior to the date of filing the revision.

The Final IPSAR is being made available at the NRC's Public Document Room 1717 H Street, NW., Washington, D.C. 20555 and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Bricktown, New Jersey 08723 for inspection and copying. Copies of this Final Report (Document No. NUREG-0822) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the Sales Office, U.S. Nuclear Regulatory Commission, Director, Division of Technical Information and Document Control, Washington, D.C. 20555, Attention: Publications Unit.

Dated at Bethesda, Maryland, this 9th day of February 1983.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-5022 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana and Michigan Electric Co.; Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) as issued Amendment No. 69 to Facility Operating License No. DPR-58, and Amendment No. 51 to Facility Operating License No. DPR-74 issued to Indiana and Michigan Electric Company (the licensee), which revised Technical Specifications for operation of Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Berrien County, Michigan. The amendments are effective as of the date of issuance. The Technical Specifications are to be implemented by April 15, 1983.

These amendments will change the Technical Specifications to: (1)

Implement the requirements of Appendix I to 10 CFR Part 50, (2) establish new limiting conditions for operation (LCO) for the quarterly and annual average release rates, and (3) revise environmental monitoring programs to assure conformance with Commission regulations. These new Technical Specifications will also replace all of Appendix B "Part I, Radiological" of the current Technical Specifications.

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 the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for the particular action is not warranted because there will be no significant effect on the quality of the human environment beyond that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated August 1973.

For further details with respect to this action, see: (1) The application for amendments dated September 17, 1982, (2) Amendment Nos. 69 and 51 to License Nos. DPR-58 and DPR-74, and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. 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 7th day of February 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-5021 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[License No. 12-13568-01 (EA-81-32)]

Isotope Measurements Laboratories, Inc.; Memorandum and Order Terminating Civil Penalty Proceeding

February 22, 1983.

Isotope Measurements Laboratories, Inc. (IML), 3304 Commercial Ave., Northbrook, Illinois is the holder of an NRC byproduct material license which, as pertinent to this proceeding, authorizes it to receive packaged radiopharmaceuticals from licensed suppliers and deliver them to licensed recipients.

Pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), and 10 CFR 2.205, on May 28, 1981, the Director of the Office of Inspection and Enforcement served on the Licensee a Notice of Violation and Proposed Imposition of Civil Penalty which alleged that the Licensee was receiving and distributing radiopharmaceuticals without specific authorization. After considering the Licensee's response, the Director issued an Order Imposing a Civil Penalty on October 22, 1981 in the total amount of $5,700.00. 46 FR 53548 (October 29, 1981). On November 2, 1981, the Licensee requested a hearing which was authorized by the Commission's Notice of Hearing dated January 5, 1982.

No hearing was conducted, however, because counsel for IML and the NRC Staff on November 29, 1982 submitted a joint motion to terminate the proceeding. The motion is founded upon an agreement in which IML admits certain facts, the parties agree to settle the matter in the compromised amount of $4,000, and IML agrees to cease and desist from receiving radioactive material from any supplier not authorized to distribute it in accordance with 10 CFR 32.72. The agreement recites that IML neither admits nor denies that its activities did not comply with NRC "requirements". Pursuant to 10 CFR 2.203 the compromise of a civil penalty is subject to the approval of the designated presiding officer who, under the express provision of that section, must accord due weight to the position of the Staff.

I approve the settlement but several aspects of the Notice of Violation, the Licensee's answer, and the compromise agreement present unusual issues relating to the integrity of the NRC enforcement process. Therefore, the material aspects of the alleged violation and the reasons for approving the compromised settlement should be set out on the public record of this proceeding.

The facts of the controversy are not in dispute. Technetium-99m (Tc99m) is a byproduct material with a six-hour half life used in a diagnostic radiopharmaceutical. Because of the short half life some hospitals, in this case Mason District and Pana Community, are permitted to possess and to use a molybdenum/technetium-99m (Mo/Tc99m) generator which will permit the eluting or "milking" of Tc99 as needed. NRC regulations, 10 CFR 32.72, require a license to manufacture and distribute radiopharmaceuticals containing byproduct material for use by persons such as physicians licensed for that purpose. Generally hospitals such as Mason District and Pana Community do not possess licenses to manufacture and distribute radioactive material, *i.e.*, they are not licensed radiopharmaceutical suppliers. Mason District and Pana Community did not, in fact, possess such licenses during the time relevant to this proceeding. As noted, IML's license, as pertinent, is limited to receiving radiopharmaceuticals from licensed suppliers.

Prior to August 8, 1980 IML received radiopharmaceuticals from hospitals not licensed under 10 CFR 32.72 and transferred them to other hospitals. On August 8, 1980, Mr. Keppler, Director of NRC Region III sent a letter to IML stating:

> With regard to the matters discussed, we understand that you have undertaken or will undertake the following action by August 9, 1980: Discontinue all transfers and deliveries of byproduct material from facilities that are not licensed by the Nuclear Regulatory Commission for distribution under 10 CFR 32.72.

In a telephone conference with the parties on January 24, 1983, I confirmed that Mr. Keppler's letter was a reference to the same practice which has given rise to this civil penalty proceeding.

Nevertheless beginning on August 11, 1980, IML began a series of 21 pickups (on 19 penalty days) of radiopharmaceuticals containing Tc99m from Mason District and Pana Community Hospitals and delivered them to other hospitals. This activity resulted in the imposition of the civil penalty by the Director of I&E.

IML defended on several bases. First it states: "Milking the generator does not constitute 'manufacture' of the eluate. Therefore, a hospital may ship eluate without first obtaining a 10 CFR 32.72 license."[1] This answer did not convince

[1] Answers to Order to Show Cause and to Notice of Imposition of Civil Penalty, June 24, 1981.

the Staff, nor does it convince me, because it does not address the fact the 10 CFR 32.72 specifically covers the *distribution* as well as the manufacture of radiopharmaceuticals.

IML also states that Mr. Keppler's letter referring to the distribution of byproduct materials under 10 CFR 32.72 could not mean what it seems to say because that interpretation would prevent the transport of standard sources for calibration purposes. The better reasoning, according to IML, is that IML was ordered to "[n]ot distribute radiopharmaceuticals which contain byproduct material unless the radiopharmaceutical was manufactured by a person licensed under 10 CFR 32.72."[2]

Apparently IML's logic is that the license to manufacture the Mo/Tc99m generator carried with it the license to distribute the eluate since eluting the generator is not a separate manufacturing step. But the logic fails because IML received the Tc99m from an unlicensed hospital, not from the licensed manufacturer/distributor of the generator/eluate. In any event, by advancing this argument, IML ignores the central concern that it had entered into an understanding with the Region III office that accepting radiopharmaceuticals from hospitals not licensed under 10 CFR 32.72 was a violation of the terms of IML's license and that the practice would stop. There was no basis to read Mr. Keppler's letter differently because it was that very practice which was involved.

Because of IML's apparent difficulty in interpreting and complying with the terms of its license and complying with its understanding with Region III, and because of its continued unwillingness to acknowledge that its activities were not in compliance with the regulations, the cease-and-desist terms of the settlement agreement seemed insufficiently specific to provide assurance that the practice would end.

IML's commitment was:

> 3. IML agrees that it will cease and desist from any future receipt of radioactive material from persons who are not authorized as radiopharmaceutical suppliers to distribute material in accordance with 10 CFR 32.72, and from making further distribution of such material without a license under 10 CFR 32.72. In this regard, IML further acknowledges that hospitals such as Mason District Hospital and Pana Community Hospital are generally not authorized to distribute radioactive material as licensed radiopharmaceutical suppliers in the absence of an express license condition permitting such distribution.

[2] Answer to Show Cause Order.

Under IML's theory that the manufacturer of the Mo/Tc99m generator was the respective licensed distributor, the very practice now penalized would be permissible under the cease-and-desist agreement. Therefore I requested and received a further commitment from IML as a condition of approving the compromised settlement. Added to paragraph 3 will be:

> Upon receiving radiopharmaceuticals containing byproduct material, IML shall make an affirmative inquiry and receive a definite demonstration that the person supplying the material is authorized to do so by a license issued under 10 CFR 32.72, or, in the case of a hospital, that the hospital has the functional equivalent of a § 32.72 license. The methods set out under 10 CFR 30.41 to verify the authority of a recipient, when applied to a supplier, would be an appropriate demonstration. Provided however, IML may continue to act upon emergency requests for the transfer of radiopharmaceuticals under a temporary authority granted by the NRC to a person authorized to receive radiopharmaceuticals pursuant to 10 CFR 35.14. When IML relies upon an oral certification from a transferor under emergency authority from the NRC, that oral certification must be confirmed in writing within ten days.

The amount of the penalty as compromised appears reasonable. Both parties agree that the practice in dispute did not endanger health under these circumstances. The Staff reports that its belief that IML's activities were in knowing violation of its understanding with Region III was considered in calculating the penalty. The penalty is in accordance with the Staff guidelines in effect during the time of the relevant activities, and approximately the same result would be achieved under the Commission's General Statement of Policy and Procedure for Enforcement Actions, 47 FR 9987, March 9, 1982.

Accordingly in consideration of the settlement agreement as modified I approve the imposition of the compromised civil penalty and terminate the proceeding.

Bethesda, Maryland, February 22, 1983.

Ivan W. Smith,

Administrative Law Judge.

[FR Doc. 83-5025- Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-64, to the Power Authority of the State of New York (the licensee), which revised the license for operation of the Indian Point Nuclear Generating Station Unit No. 3 (the facility) located in Buchanan, Westchester County, New York. The amendment is effective within 60 days of the date of issuance and is implemented in accordance with the provisions of 10 CFR 73.55(b)(4).

The amendment adds a license condition to the Commission approved Guard Training and Qualification Plan as part of the license.

The licensee's filing, which has been handled by the Commission as an 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 this 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.

The licensee's filing dated August 9, 1982 consists of Safeguards Information required to be protected from disclosure pursuant to 10 CFR 73.21.

For further details with respect to this action, see: (1) Amendment No. 46 to Facility Operating License No. DPR-64 and (2) the Commission's related letter to the licensee dated February 16, 1983. These items are available for public inspection at the Commission's Public Document Room, at 1717 H Street, NW., Washington, D.C. 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (1) and (2) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of February 1983.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-5023 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority; Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 86 to Facility Operating License No. DPR-33, Amendment No. 83 to Facility Operating License No. DPR-52 and Amendment No. 57 to Facility Operating License No. DPR-68 issued to Tennessee Valley Authority (the licensee), for operations of the Browns Ferry Nuclear Plant, Unit Nos. 1, 2 and 3, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications to: (1) Reduce the duration of containment integrated leak rate tests by following the procedures outlined in Bechtel topical report BN-TOP-1, (2) revise the requirements in Sections 3.7.2 and 4.7.2 to conform the leak rate testing to the BWR/4 Standard Technical Specifications and (3) update the tables on isolation valves that are required to be tested.

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 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 the 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 issuance of these amendments.

For further details with respect to this action, see: (1) The application for amendments dated August 19, 1980, as supplemented by letter dated December 3, 1982, (2) Amendment No. 86 to License No. DPR-33, Amendment No. 83 to License No. DPR-52, and Amendment No. 57 to License No. DPR-68, and (3) the Commission's related Safety Evaluation. All of these are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. 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 14th day of February 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-5024 Filed 2-25-83; 8:45 am]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Reports; Safety Recommendations and Responses; Availability

Responses; Availability

Recommendation Responses from:

Aviation—*Federal Aviation Administration: Nov. 22: A-82-24 and -25:* Is reviewing the certification policies related to the air phase of landing distance determination, and a proposed change to the Engineering Flight Test Guide for Transport Category Airplanes, FAA Order 8110.8 will be released for public comment. *Nov. 23: A-81-61:* Operators are training crewmembers in the normal and emergency use of aft ventral exits on applicable Boeing 727 aircraft, and the passenger briefing cards show that the ventral exit is an emergency exit and contain information on how to activate that exit. *A-81-62:* Believes it is unlikely that a passenger looking for the ventral airstair control on applicable Boeing 727 aircraft or a cabin attendent trained in the use of the emergency system would overlook the emergency handle cover when entering the ventral stairway. The placarding complies with CAR 4b.362(f). *Nov. 29: A-82-98:* Because of the many new entrants into air carrier service, a reemphasis as well as the possible development of additional guidance regarding safe and effective coordination between flight and cabin crew is being evaluated. *Nov. 29: A-81-139 through -143:* Will review the 77 accident cases studied by the Safety Board in developing the recommendations to develop the necessary and sufficient data base to establish technologically defensible state-of-the-art crash dynamics design standards and related regulatory action regarding transport aircraft crash protection. *Nov. 30: A-82-112 and -113:* The Graphic Notices and Supplemental Data publications were discontinued with the expiration of the Jan. 1982 edition. Will ensure that standard formatting and symbologies are used in graphic depictions and that fully adequate explanations of symbologies are included in accompanying legends. *A-82-114,* regarding adding to all Federal sectional aeronautical charts a prominent advisory notation pertinent to terminal areas at which radar traffic advisory services are available on request: Recommendation was referred to Task Group 1-6.1 of the National Airspace Review for consideration. *A-82-115:* Does not have authority to limit or control publication of aeronautical charts by commercial or State government producers or to require specific content on charts produced by others. *Dec. 7: A-82-46:* Airworthiness directive action is not justified with respect to the landing gear position indicating system wiring of the Shorts SD3-30 aircraft, because the reported wiring failures have no direct effect on operation of the landing gear system. *A-82-47:* Manufacturer has issued service information and obtained vendor improvements to the landing gear downlock cable and switch assemblies of the Shorts SD3-30 aircraft, and improved switches are being installed during landing gear overhaul. *Dec. 7: A-82-123 through -129:* Will convene a special flight standardization board to review adequacy of current training and type certification requirements for general aviation multiengine turbojet airplanes. Specific areas of review will include aerodynamic, meteorological, and physiological aspects of high-performance, high-altitude flight; hazards associated with operations near the low- or high-altitude flight; hazards associated with operations near the low- or high-speed buffet boundaries; effects of maneuvering load factors; potential for loss of control at critical altitudes; powerplant characteristics; potential effects of turbulence encounters; and recommended recovery practices. *Dec. 13: A-82-137:* Issued Airworthiness Directive (AD) 82-20-05 (Amendment 39-4466), on Sept. 17, 1982, imposing a 1,200-hour life limit and requiring the detailed inspection identified in Aerospatiale Service Bulletins 05.08 and 05.02 of the tail rotor driveshaft bearings on Aerospatiale AS 350 and AS 355 model helicopters. *A-82-138:* Daily visual inspection of the tail rotor driveshaft bearings on Aerospatiale AS 350 and AS 355 model helicopters is already included in Aerospatiale maintenance inspection procedures. *A-82-139:* Aerospatiale now provides a greasable type bearing as a replacement for the sealed bearings on Aerospatiale AS 350 and AS 355 model helicopters. *Dec. 9: A-82-118:* Available data do not support taking action to amend existing flight manuals to specify a minimum speed for icing conditions. Will issue an Advisory Circular regarding ice protection certification on 14 CFR Part 23 airplanes. *A-82-119:* Accident prevention specialists have been directed to emphasize the importance of following prescribed aircraft operating procedures and the availability of Advisory Circulars, directives, and pamphlets regarding aircraft icing. *Dec. 9: A-76-136 and -137:* Promotes the use of friction measurement devices to monitor runway surface conditions in order to assist airport operators in planning and scheduling runway maintenance/improvement projects. Believes that requiring airports to purchase and use such devices as the Mu Meter and the Saab Friction Tester is neither appropriate nor justified because lack of care or expertise in maintaining and operating the equipment can result in erroneous readings and offset any advantages gained by their use. *Dec. 9: A-80-*

51 and -52: Will publish a change to Chapter 4, Air Traffic Control, Section 5, Preflight, of the Airman's Information Manual titled "IFR Operations to High Altitude Airports" that will caution pilots planning flights to airports located in mountainous terrain to consider the necessity for an alternate airport even when the forecast weather conditions would technically relieve them from the requirement to file one. Plans to amend 14 CFR 91.23 and 91.83 to make instrument flight rules for alternate airports and fuel reserve requirements identical to those of 14 CFR Part 135. *Dec. 14: A-82-32 and -33:* Is reviewing technical data regarding problems with wing spar tension bolts on Beech 35 and other model aircraft. *Dec. 15: A-82-106:* The Society of Automotive Engineers is considering an Aerospace Standard (minimum performance) (AS-8039) for general aviation flight data/cockpit voice recorders. FAA intends to prepare a Technical Standard Order referencing this standard when it is approved. *A-82-107 through -111:* As part of FAA's ongoing analysis of questions related to flight data/cockpit voice recorders, will consider a requirement for all multiengine, turbine-powered, fixed-wing aircraft certificated to carry six or more passengers operating above 25,000 feet and all multiengine, turbine-powered rotorcraft certificated to carry six or more passengers manufactured on or after a specified date to be prewired to accept a cockpit voice recorder and a flight data recorder. *Dec. 22: A-82-146 through-149:* Administrator has directed increased surveillance, inspections and investigations of the air traffic control system by the most senior and qualified executive officials to be conducted randomly and at all times. *Dec. 23: A-81-9 through-11:* Published on Aug. 27, 1982, Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports, providing information on aviation fuel deliveries to airport storage and the handling, quality control, and dispensing of fuel into aircraft. Is drafting a general standard that could be used as a guide in developing airport fueling procedures. Is considering changing rules in 14 CFR Part 139, and has been petitioned by the South Central Chapter of the American Association of Airport Executives to relieve airport operators who hold an Airport Operating Certificate from all responsibility with respect to fuel handling unless the airport operator itself is the fueling agent. *Dec. 23: A-81-135 and-136:* Issued an emergency telegraphic Airworthiness Directive on Oct. 27, 1982, requiring the inspection and, if necessary, the replacement of certain moisture separator shell assemblies on Fairchild F-27 and FH-227 model aircraft. *Dec. 23: A-82-130:* Is reviewing aircraft service records relative to carburetor mixture controls to determine the need for action to amend 14 CFR 23.1147, Mixture Controls, and/or 14 CFR 33.35, Fuel and Induction System. *A-82-131:* Is reviewing the incorporation of a fail-safe safety device as a modification to the engine-supplied carburetor on small, single-engine airplanes. *A-82-132:* Will publish in the General Aviation Airworthiness Alerts (Advisory Circular 43-16) an article emphasizing the proper maintenance and inspection of mixture control linkage assembly problems of general aviation airplanes. *Dec. 28: A-82-28:* Published, in April 1982, General Aviation Airworthiness Alert (AC-43-16) No. 45 emphasizing the importance of not subjecting critical heat-treated aluminum alloy parts to extensive heat by welding or any other means. *Dec. 29: A-82-143:* A supplementary flight test program and a critical design review of the main rotor system of the Robinson R-22 model helicopter indicates that the system complies with 14 CFR Part 27 and no unusual flight characteristics exist when the R-22 helicopter is operated within the Rotorcraft Flight Manual Limitations. *A-82-144:* Tests indicate that adequate engine power is available on Robinson R-22 model helicopters to recover RPM should a rapid decay occur. Issued telegraphic Airworthiness Directive T82-23-51 on Oct 29, 1982, which required that the low rotor warning indication be increased from 91 percent plus or minus 1 percent to 95 percent plus or minus 1 percent, and required the installation of a low rotor speed warning light adjacent to the RPM indicator. Is preparing an Operations Bulletin to emphasize the flight instructor's responsibilities in student training. *Dec. 29: A-82-80:* Issued Maintenance Bulletin No. 128 on Sep. 9, 1982, directing field inspectors to emphasize to their assigned certificate holders their responsibility under the Code of Federal Regulations for the proper servicing of their aircraft and that they are not relieved of that responsibility even though arrangements are made with other persons to perform the work. *Dec. 30: A-81-120:* Issued Maintenance Bulletin No. 55-1 on Aug. 10, 1982, to alert field personnel of potential problem areas such as elevator vibration/flutter on Convair 240, 340, 440, and all modified models, and recommends that principal maintenance inspectors review their assigned operators' maintenance program. *Dec. 30: A-79-93:* Manufacturer has revised the Beech Model 90 Airplane Flight Manual (AFM), "Procedures Before Takoff," to include a stabilizer out-of-trim warning system check, and will similarly revise the Model 100 AFM. *Dec. 30: A-82-90:* Is investigating the stalling characteristics of the Piper Model PA-38-112 Tomahawk to determine if there is a need for requiring installation of in board flow strips on all such aircraft manufactured before Jan. 25, 1979, that have not been modified with these flow strips in accordance with the provisions of Piper Service Letter No. 876. *Jan 4: A-82-133:* Will issue an air carrier operations bulletin concerning the listing of an alternate airport on an instrument flight rules flight plan. *A-82-134:* Does not believe that there is a need for a pilot to transmit to the Air Route Traffic Control Center the alternate airport designated as part of the instrument flight rules flight plan. *Jan. 5: A-82-97:* Will issue an Airworthiness Directive concerning the Cessna Model 172 right-hand control yoke assembly problem. *Jan. 6: A-82-142:* Does not believe that a flight control system priority valve needs to be developed and installed on Lockheed L-188 airplanes. *Jan. 14: A-82-74:* Issued on Nov. 15, 1982, Airworthiness Directive 82-23-05 *Gulfstream American:* Amendment 39-4492 applicable to certain Model 685 airplanes requiring replacement of the existing induction air elbow and inspection of the exhaust system to prevent possible contamination of cabin air. *Jan. 14: A-82-28:* Believes that adequate loading information is available to pilots of Piper PA-28-140 airplanes and that an Airworthiness Directive requiring additional precautionary information regarding spins is not warranted.

Falcon Jet Corp: Dec. 3: A-82-101 through -103: Favors more widespread use of cockpit voice recorders and flight data recorders in general aviation aircraft, but does not favor the concept of prewiring all aircraft for installation of such equipment, which the customer may elect not to purchase and which is not required by the Federal government.

Fokker B.V. (The Netherlands): Dec. 13: A-82-101 through -103: Recommendations concerning use of cockpit voice recorders and flight data recorders in general aviation aircraft should be directed to the relevant operators who would have to bear the cost of such installations.

General Aviation Manufacturers Association: Dec. 17: A-82-101 through -103: Favors a program of development, test, and installation of a low-cost cockpit voice recorder for general aviation aircraft, but with no customer demand for the device, GAMA members are not thought to be undertaking such development. Does not support the installation of flight data recorders because the initial cost and upkeep does not seem justified when weighed against the potential information that would be derived after an accident, and because the development of a suitable device would be expensive considering the need to develop the sensing equipment for the airplane systems, and such development is not supported by the customer. Prewiring is neither feasible nor desirable at this time.

National Association of State Aviation Officials: Jan. 6: A-82-116, which recommended that State aviation authorities include on State aeronautical charts the information contained on Federal sectional aeronautical charts pertinent to safe navigation, particularly in regard to radar traffic advisory services in terminal areas where there are multiple airfields: States can be expected to make the changes to State aeronautical charts as the print cycles come around on an annual or biannual basis.

Note.—Single copies of recommendation letters (identified by recommendation number) and response letters are free on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Dated: February 28, 1983.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 83-4880 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-58-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Resource Assessment Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Resource Assessment Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Monday, February 28, 1983, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Foley, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-4903 Filed 2-25-83; 8:45 am]

BILLING CODE 0000-00-M

Conservation Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Conservation Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Tuesday, March 1, 1983, 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW. Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Eckman, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-4904 Filed 2-25-83; 8:45 am]

BILLING CODE 0000-00-M

Forecasting Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Forecasting Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Wednesday, March 2, 1983, 8:45 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW., Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-4905 Filed 2-25-83; 8:45 am]

BILLING CODE 0000-00-M

Reserves and Reliability Subcommittee Meeting

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of the Reserves and Reliability Subcommittee of its Scientific and Statistical Advisory Committee.

DATE: Thursday, March 3, 1983, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office located at 700 SW., Taylor Street, Suite 200, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-4906 Filed 2-25-83; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13041]

Guardian Insurance & Annuity Co., Inc., et al.; Filing of Application

February 18, 1983.

In the matter of The Guardian Insurance & Annuity Company, Inc.; The Guardian Separate Account A; Guardian Investor Services Corporation, 201 Park Avenue South, New York, New York 10003 and Value Line Securities, Inc., 711 Third Avenue, New York, New York 10017; (812-5418); filing of application pursuant to section 6(c) of the act for an order of exemption from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), 27(d), of the act and rule 22c-1 thereunder and for an order pursuant to Section 11 of the act approving the terms of certain offers of exchange.

Notice is hereby given that The Guardian Insurance & Annuity Company, Inc. ("Company"), The Guardian Separate Account A ("Account"), Guardian Investor Services Corporation ("Investor Services"), and Value Line Securities, Inc. ("Value Line") (hereinafter collectively referred to as "Applicants"), filed an application on December 30, 1982 and an amendment thereto on February 9, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions to the extent requested from Sections 2(a)(32, 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder and pursuant to section 11 of the Act for an order approving the terms of certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant statutory provisions.

The Account, a separate account of the Company, is registered under the Act as a unit investment trust. The Company is the sponsor-depositor for the Account. The Account was established for the purpose of funding single premium and flexible premium individual deferred variable annuity contracts ("Contracts"). Investor Services and Value Line are the principal underwriters of the Contracts. Under the Contracts, payments will be allocated to one or more of three Separate Account Divisions ("Divisions"). Each Division invests in the shares of one of the following funds, each of which is registered under the Act as an open-end diversified management investment company: (1) The Guardian Cash Fund, Inc.; (2) The Guardian Stock Fund, Inc.; and (3) The Guardian Bond Fund, Inc. (collectively, the "Funds"). Applicants state that all assets of the Account will be held in custody for safekeeping by the Account. The assets of each Division will be kept physically segregated and held separate and apart from assets of other Divisions. Shares of the Funds in each Division will be held in open account in lieu of actual share certificates. The Account will maintain a record of all purchases and redemptions of shares of the Funds held in each Division.

The Company does not impose an initial sales charge on purchase payments. If a Contract is totally or partially surrendered during certain years, however, a contingent deferred sales charge is applied as a means for the Company to recover its sales expenses ("Sales Charge"). Applicants state that it is expected that such charges will cover all costs associated with distribution of the Contracts.

Other charges under the Contracts include applicable state premium taxes and charges for the Company's administrative expenses and for its assumption of mortality and expense risks. Applicants state that premium taxes will be deducted either from Contract payments or from the Contract value upon annuitization as determined by applicable state law. Applicants further state that prior to and upon surrender or annuitization, the Company will deduct an administrative charge of $30 for single premium Contracts and $35 for flexible premium Contracts from the Contract value as of each anniversary of the issue date. Finally, Applicants state that for assuming a mortality risk, including a death proceeds risk and an expense risk, the Company will make a daily charge of 1% on an annual basis against the assets of each Division. Of this charge, .65% will be for the mortality risks and .35% will be for expense risks.

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, from the provisions of the Act and rules promulgated thereunder, if and to the extent that such exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request exemptions pursuant to Section 6(a) from certain provisions of the Act as summarized below.

Applicants propose that they be granted exemptions from Sections 27(c)(2) and 26(a)(2)(C) to allow: (1) the deduction of the mortality and expense risk charges; (2) the deduction of the annual administration charge; (3) the deduction for premium taxes and; (4) the deduction of the Sales Charge.

With respect to (1) above, Applicants assert that the mortality and expense risk charge meets the standard set forth in Section 6(c) as it is reasonable compared to comparable products offered by other companies and reasonable in relationship to the risks assumed. The Company represents that it has reviewed the contracts and registration statements of five other separate accounts offering variable annuity contracts with comparable provisions and guarantees, which include pre-retirement death benefits, guaranteed annuity rates, contingent deferred sales charges, fixed annual administrative fees, and mortality and expense risk charges. Based on this review the Company has determined that its 1% mortality and expense risk charge is fair and reasonable in amount, as evidenced by customary practice within the variable annuity industry. The Company further represents that the data supporting and setting forth this conclusion will be maintained on file at the offices of the Company available to the Commission.

With respect to (2), (3) and (4) above, Applicants assert that these charges have been set at levels no higher than the estimated actual costs of administering the Contracts and without expectation of profit. With respect to (4) above, Applicants assert that the Contracts limit the total of all contingent deferred sales charges which may be assessed against any one contract to a maximum of 5% of the total purchase payments made. Applicants also assert that the total of all fees and charges represents an amount that is consistent with the protection of investors and reasonable as compared to similar fees and charges imposed on competitive variable annuity products.

Applicants request exemptions from Sections 26(a) and 26(a)(2)(D) to the extent necessary to permit the Account to hold its assets without an independent trustee or custodian and to hold the securities of the Funds in open account in lieu of stock certificates. Applicants represent that the assets of each of the Divisions will be protected by the safeguards and conditions described in the application and that requiring the issuance of fund certificates would impose an unnecessary administrative burden. Applicants also request exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1) and 27(d) to the extent necessary to permit deduction of the Sales Charge and the administrative charge, described above, upon redemption.

Applicants also propose that Contractowners be permitted to transfer all or part of their investment in one Division to another Division subject to certain limitations on the frequency of transfers. Applicants request approval pursuant to Sections 11(a) and 11(c) of the Act to the extent requested to permit the transfers described in the Contracts.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 15, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4042 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22852]

Southern Co.; Issuance and Sale of Common Stock

February 14, 1983.

In the matter of The Southern Company, 64 Perimeter Center East, Atlanta, Georgia 30346 (70-6841); notice of proposed issuance and sale of common stock pursuant to dividend reinvestment and stock purchase plan and to employee savings plan and exception from competitive bidding.

The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

Southern proposes to issue and sell from time to time through April 30, 1985, a maximum of 15,000,000 shares of its authorized but unissued common stock, par value $5 per share ("Additional Common Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan"). These shares would be in addition to the balance of 15,189,206 shares at December 31, 1982, remaining under the authorization granted by order of this Commission dated March 30, 1982 (HCAR No. 22434). The proceeds from the sale, estimated to total approximately $217,500,000, will be used for equity investments in the operating subsidiaries and for other corporate purposes.

The Additional Common Stock will be offered to all holders of Southern's

common stock pursuant to the Dividend Plan whereby shareholders voluntarily may elect to (1) Have cash dividends on all of their shares of Southern common stock automatically reinvested in shares of such common stock at a price equal to 95% of the average of the daily high and low sales prices of Southern's common stock, as published in The Wall Street Journal in its report of NYSE—Composite Transactions, for the period of five trading days ending on the dividend payment date (or the period of five trading days immediately preceding the dividend payment date, if the New York Stock Exchange is closed on the dividend payment date), or (2) reinvest less than all of their cash dividends in shares of Southern's common stock at such price, or (3) reinvest all or less than all of their cash dividends as described above and, in addition, make optional cash payments (not less than $25 per payment nor more than a total of $6,000 per quarter) to invest in shares of Southern's common stock at a price equal to 100% of such market price average for the period of five trading days ending on the monthly purchase date (or the period of five trading days immediately preceding the monthly purchase date, if the New York Stock Exchange is closed on the monthly purchase date), or (4) continue to receive cash dividends on all shares held by them and only make optional cash payment for investment. Cash dividends on shares credited to a participant's account under the Dividend Plan will be reinvested in shares of Southern's common stock at a price determined as set forth in clause (1) above. No shares will be sold under the Dividend Plan at less than the par value of such shares.

The First National Bank of Atlanta currently administers the Dividend Plan and purchases the shares of Southern's common stock under the Dividend Plan as agent for the participants. No service charge or commission is paid by participants in connection with purchases under the Dividend Plan. A participant retains all voting rights relating to shares purchased under the Dividend Plan and credited to his account, and such shares will be voted in accordance with his instructions.

Southern also proposes to issue and sell from time to time through April 30, 1985, a maximum of 2,000,000 shares of its authorized but unissued common stock, par value $5 per share, ("New Stock") pursuant to the Employee Savings Plan for the Southern Company System ("Savings Plan"). The proceeds from the sale of the New Stock, estimated to be approximately $29,000,000 will be used for equity investments in its operating subsidiaries and for other corporate purposes.

The New Stock will be offered to employees of Southern's subsidiaries pursuant to the Savings Plan, a voluntary plan under which employees may contribute, through payroll deductions, not less than 2% nor more than 12% of their compensation. Each employing company will contribute, on behalf of each of the Savings Plan members in its employ, an amount not in excess of 6% of the member's compensation. Each Savings Plan member must direct that his contributions be invested in the Company Stock Fund, the Equity Fund, and/or the Fixed Income Fund.

The National Bank of Atlanta acts as Trustee for the trust which is part of the Savings Plan, and the Savings Plan is administered by the Savings Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc. The Trustee votes the shares of common stock of Southern held by it in accordance with written directions received from the individual members on whose behalf such shares are held and does not vote any such shares for which voting instructions are not received. The Trustee has the authority to vote all other securities in its discretion.

Investment purchases by the Trustee for the funds may be made either on the open market or by private purchase, provided that no private purchase may be made of common stock of Southern at a price greater than the last sale price or current independent bid price, whichever is higher, for such stock on the NYSE, plus an amount equal to the commission payable in a stock exchange transaction if such private purchase is not made from Southern. The Trustee may purchase common stock of Southern directly from Southern under the Dividend Plan or under any other similar plan made available to all holders of record of shares of common stock of Southern, at the purchase price provided for in such plan.

Southern has requested that the increase and sale of the Additional Common Stock and the New Stock be excepted from the competitive bidding requirements pursuant to Rule 50(a)(5).

The declaration and any 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 March 14, 1983, 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 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 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. 83-4940 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13024]

SteinRoe Tax-Exempt Money Fund, Inc.; Filing of Application

February 15, 1983.

In the matter of: Steinroe Tax-Exempt Money Fund, Inc., 150 South Wacker Drive, Chicago, Illinois 60606; (812-5395); notice of filing of application for an order of the commission pursuant to section 6(c) of the act granting exemptions from the provisions of sections 2(a)(41) and 12(d)(3) of the act and rules 2a-4 and 22c-1 thereunder.

Notice is hereby given that SteinRoe Tax-Exempt Money Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on December 15, 1982, and amendments thereto on February 1 and 14, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant to the extent necessary from (1) the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to permit the Applicant (a) to compute its net asset value per share using the amortized cost method of valuation and (b) to value, in the manner described in the application, standby commitment rights by which the Applicant may require a broker-dealer or a bank to repurchase portfolio securities previously sold to the Applicant by such person, and (2) the provisions of Section 12(d)(3) of the Act to permit the Applicant to acquire such standby commitments from broker-dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein.

which are summarized below. Such persons are also referred to the Act and the Rules thereunder for the complete text of those provisions thereunder from which an exemption is being sought.

Applicant states that it is organized as a Maryland corporation and that its investment objective is maximum current income exempt from Federal income tax, and that in pursuing that objective, it will attempt to maintain relative stability of principal and liquidity. Applicant further states that it will invest principally in a diversified portfolio of short-term municipal securities, consisting of indebtedness issued by or on behalf of states, territories and possessions of the United States and the District of Columbia and their political subdivisions, agencies and instrumentalities, including participation interests therein, the interest on which is, at the time of issuance, in the opinion of the issuer's bond counsel, exempt from Federal income tax ("Municipal Securities").

Applicant states that it may invest in variable rate securities which the Applicant's Board of Directors determines no less frequently than quarterly to be of high quality, and in variable rate demand securities, which entitle the purchaser to resell the securities to the issuer at an amount approximately equal to amortized cost or the principal amount thereof plus accrued interest in not more than seven days after exercise of an unconditional right of demand and which securities the Board of Directors determines no less frequently than quarterly to be of high quality, provided that the interest rate on any such security (a) is to be adjusted no less frequently than annually, or (b) is a floating rate, adjusted according to some objective standard, which the Applicant's Board of Directors has determined will result in a current market value approximating its principal amount. Applicant states that maturity of these variable rate and variable rate demand securities will be determined in accordance with the procedures set forth in proposed rule 2a–7 under the Act (Investment Company Act Release No. 12206, February 1, 1982), or if the rule should ultimately be adopted, in accordance with the procedures set forth in the rule as adopted.

Applicant states that solely in order to facilitate portfolio liquidity (including flexibility in disposing of portfolio securities acquired with a view to their dispostion prior to their stated maturity in order to invest in other, more attractive securities) it may obtain standby commitments. Applicant represents that each such standby commitment will have the following features:

(1) It will be in writing and will be held physically by the Applicant's custodian;

(2) It will be exercisable by the Applicant at an agreed-upon price on certain dates or within a specified period prior to the maturity of the underlying security;

(3) The Applicant's right to exercise it will be unconditional and unqualified;

(4) It will be entered into only with a broker-dealer or bank which, in the opinion of the Applicant's investment adviser, presents a minimal risk of default;

(5) Although the commitment will not be transferable, the Municipal Security purchased subject to such a commitment may be sold to a third party at any time, even though the commitment is outstanding; and

(6) The amount payable to the Applicant upon exercise will be (i) the Applicant's acquisition cost of the Municipal Security purchased subject to the commitment (excluding any accrued interest that the Applicant paid on its acquisition), less any amortized market or original issue premium or plus any amortized market or original issue discount during the period the Applicant owned the security, plus (ii) all interest accrued on the security.

The application states that the management of the Applicant believes that standby commitments will enable the Applicant more readily to dispose of portfolio securities if it should become necessary or advisable to do so in order to meet redemption requirements or to invest in other, more attractive securities that are not available for purchase at the time Applicant enters into the standby commitment. It is represented that Applicant will not acquire standby commitments with a view to exercising them at a time when the exercise price may exceed the current value of the underlying securities. If the exercise price of a standby commitment held by the Applicant should exceed the current value of the underlying securities, it is represented that the Applicant may refrain from exercising the standby commitment in order to avoid causing the issuer of the standby commitment to sustain a loss and thereby jeopardizing Applicant's business relationship with the issuer. The Applicant states that the acquisition of a standby commitment will not affect the valuation or maturity of the underlying municipal obligation, which will continue to be valued in accordance with the amortized cost valuation procedures described in the application and herein.

Applicant will pay for standby commitments in cash or by paying a higher price for portfolio securities which are subject to the commitment. Applicant states that since it is difficult to evaluate the likelihood of use or the potential benefit of a standby commitment, its Board of Directors has determined that standby commitments have a fair value of zero in determining net asset vaue, regardless of whether any direct or indirect consideration is paid. Applicant further states that the cost of a standby commitment will be reflected as an unrealized loss for the period during which it holds the commitment, and that such cost will be reflected in realized gain or loss when the commitment is exercised or expires.

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that the total amount "paid" for outstanding standby commitments held in the Applicant's portfolio will not exceed ½ of 1% of the value of its total assets (taken at market value at the time of purchase of any standby commitment). The Applicant further represents, for purposes of complying with the condition of the amortized cost order requested in the application, that the dollar-weighted average maturity of its portfolio not exceed 120 days, that the maturity of a portfolio security shall not be considered shortened or otherwise affected by any standby commitment to which such security is subject. The Applicant further states that it has received an opinion of counsel that interest on Municipal Securities subject to such standby commitments is exempt from Federal income tax under existing law.

The Applicant contends that its proposed acquisition of standby commitments will not pose new investment risks, but rather will improve its liquidity and ability to pay redemption proceeds the next day in Federal funds. The Applicant states that its investment adviser will periodically evaluate the credit of institutions issuing standby commitments. For that reason and in light of the fact that standby commitments will be valued at zero in

determining the Applicant's net asset value, the Applicant represents that the acquisition of such commitments will not meaningfully expose its assets to the entrepreneurial risks of the investment banking business, and will not require it to evaluate the credit of such institutions in determining its net asset value.

In order to attract and retain investors, Applicant contends that it must offer stability of principal and a continuous flow of investment income. If the requested exemptions were granted, it is further contended that Applicant's investors would have all the conveniences and advantages of a stable price of $1.00 per share, under conditions designed to provide adequate safeguards concerning portfolio quality and in accordance with procedures designed to assure equitable treatment of new investors and existing shareholders. Moreover, the application states that, in light of the above-described characteristics of the Applicant, the amortized cost method of valuing portfolio securities will reflect a fair value of such securities, except in unusual or extraordinary circumstances. Applicant's Board of Directors, however, will monitor deviations between the net asset value per share determined by the amortized cost method and the net asset value determined using available market quotations so that any necessary changes in the valuation method may be made to eliminate or reduce, to the extent reasonably practicable, material dilution or other unfair results to new or existing shareholders. Finally, the application states that although there is no assurance that the amortized cost value of a municipal obligation will at all times equal its market value, there is no significant risk of an event occurring that would make the amortized cost valuation of portfolio securities, including securities subject to standby commitments, inappropriate. However, in the event that the market or fair value of the securities were not substantially equivalent to their amortized cost value, the Board of Directors of the Applicant may determine that the securities should be valued on the basis of available market information.

The Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising the Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser, the Applicant's Board of Directors undertakes (as a particular responsibility within its overall duty of care owed to the Applicant's shareholders) to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objective, to stabilize the Applicant's net asset value per share, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's net asset value per share as determined by using available market quotations from Applicant's amortized cost price per share, and maintenance of records of such review;[1]

(b) In the event such deviation from the Applicant's amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated;

(c) Where the Board of Directors believes that the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it considers appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include, *inter alia*, selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; increasing, reducing or suspending dividends or distributions from capital or capital gains; redeeming shares in kind; or establishing a net asset value per share using quotations of market value.[2]

3. The Applicant (a) will seek to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining relative stability of principal and not, in any event, in excess of 120 days, and (b) will not purchase a portfolio instrument with a remaining maturity of greater than one year.[3]

4. The Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments that the Board of Directors determines present minimal credit risks, and that are of high quality as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by the Applicant's Board of Directors.

5. The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) referred to in condition 1 above, and the Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with discharge of its responsibilities, as set forth above, to be included in the minutes of meetings of the Board of Directors. The documents preserved, pursuant to this condition, shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

6. The Applicant will include in each quarterly report to the Commission, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the

[1] To fulfill this condition the Applicant intends to use actual quotations provided by market makers or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include *inter alia* (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of Municipal Securities published by reputable sources.

[2] In establishing such a net asset value per share Applicant also indicates that it may do so by using estimates of market value or using values obtained from yield data relating to classes of Municipal Securities published by reputable sources.

[3] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4839 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[File NO. 1-7994]

Timeplex, Inc.; Listing and Registration

February 22, 1983.

In the matter of Timeplex, inc., Common Stock, $.01 Par Value; File No. 1-7994; Securities Exchange Act of 1934 Section 12(d), Application To Withdraw From Listing and Registration.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Timeplex, Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form S-A which became effective on January 20, 1983, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before March 15, 1983, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4945 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19502; File No. SR-BSE-83-1]

Self-Regulatory Organizations; Proposed Change by Boston Stock Exchange, Inc.; Relating to an Extension of the Temporary ITS Usage Charge.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 31, 1983, the Boston Stock Exchange, Inc., filed with the Securities and Exchange Commission the proposed change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Approval was granted by the Securities and Exchange Commission to allow the Exchange to impose a usage charge of $.005 per share on all trades executed by Boston members through ITS in market centers other than Boston effective for the period January 4, 1982 through December 31, 1982. It is now proposed to extend this usage charge for the period January 3, 1983 through December 30, 1983.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places set forth in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Basis for, the Proposed Rule Change

(a) The ITS usage charge was previosuly approved for the period January 4, 1982 through December 31, 1982. The extension of this charge is necessitated by the continuing costs associated with the ITS which includes lines, hardware and particularly the financing of ITS transactions. The charge, while temporary in nature, assists the Exchange to cover expenses associated with the system.

(b) The basis under the Act for the proposed rule change is Section 6(b)(4) requiring the rules of an exchange to provided for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by adoption of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Comments were neither solicitated nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and

any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

February 14, 1983.

[FR Doc. 83-4943 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19513; File No. SR-BSECC-83-1]

Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange Clearing Corporation ("BSECC")

February 18, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 778s(b)(1), notice is hereby given that on February 4, 1983, the Boston Stock Exchange Clearing Corporation ("BSECC") 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 establish a fee of $300.00 for processing authorized signature changes submitted by participants using BSECC's Signature Guarantee Program. BSECC's Signature Guarantee Program facilitates transfer agent acceptance of participating member signature guarantees by, among other things, distributing signature cards to interested transfer agents.

In its filing, BSECC stated that the fee is necessitated by the costs associated with processing authorized signature changes and distributing those changes to transfer agents. According to BSECC, the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to BSECC because it allocates equitable fees charged to participants who avail themselves of the Signature Guarantee Program.

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 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-BSECC-83-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of 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. 83-4947 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19520; SR-NYSE-82-5; SR-NYSE-82-12]

New York Stock Exchange, Inc.; Proposed Rule Change

February 22, 1983.

In the matter of New York Stock Exchange, Inc., Eleven Wall Street, New York, NY 10006, (SR-NYSE-82-5); (SR-NYSE-82-12); Order approving proposed rule change.

I. Introduction

On March 26, 1982, the New York Stock Exchange, Inc. ("NYSE") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, to amend Articles IX and X of the NYSE Constitution concerning physical access memberships (File No. NYSE-82-5).[1] The rule change would limit to 24 the number of physical access members and establish a new fee structure for such members based upon the sum of (i) the average of the annual rentals payable under *bona fide* leases of regular memberships entered into during the six calendar months prior to the beginning of the membership year; (ii) $1,500 (annual dues currently paid by all members); and (iii) with respect to the first year of membership only, a $5,000 initation fee (currently paid by all new members).

On July 1, 1982, the exchange submitted as a proposed rule change (File No. SR-NYSE-82-12) a NYSE Board resolution providing that the portion of the dues payable by physical access members which corresponds to the average rental paid by lessees (figure (i) above) be credited against the amounts of dues otherwise payable by the 1,366 equity members.[2]

II. Background

Physical access annual membership was originally created by the NYSE as one of several means to increase access to the Exchange,[3] consistent with the goals of the Securities Act Amendments of 1975.[4] Physical access members have most of the basic rights of equity members of the Exchange, including the right to maintain physical presence and facilities on the trading floor. Unlike equity memberships, which are permanent, physical access memberships are for fixed terms of one year and holders of physical access memberships do not have an equity interest in the Exchange itself in the case of liquidation. In general, physical access memberships are substantially similar to leases of equity memberships, although lessees may have greater

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[1] Notice of the proposed rule change was provided in Securities Exchange Act Release No. 18650 (April 15, 1982), 47 FR 16088 (April 27, 1982).

[2] Notice of the proposed rule change was provided in Securities Exchange Act Release No. 18893 (July 20, 1982), 47 FR 3275 (July 28, 1982). No public comments were received in response to the publication of notice of either SR-NYSE-82-5 or SR-NYSE-82-12.

[3] In its order approving physical access membership in March 1978, the Commission found that the NYSE was providing a "means of increasing access to most or all of the range of benefits (and obligations) attendant upon ownership or a NYSE seat (historically limited in number)." See Securities Exchange Act Release No. 14535 (March 7, 1978), 43 FR 10659 (March 14, 1978). Other means of access adopted at the time included the creation of electronic access memberships and authorization of the 1,366 NYSE equity members to lease their seats. Securities Exchange Act Release No. 114256 (December 12, 1977), 42 FR 63074 (December 21, 1977).

[4] Pub. L. 94-29. *See, e.g.*, S. Rep. No. 75 94th Cong. 1st Sess. at 14 (1975).

flexibility in negotiating the length of a lease, financing arrangements and other terms.

The NYSE Constitution currently limits physical access members to "such number of members of the Exchange as the Board of Directors may from time to time determine, consistent with available physical floor space and facilities" (Article IX, § 1(b)). While there has never been an explicit limit on the number of physical access members, the instant filing represents the second time the NYSE has formally attempted, in a proposed rule change filed with the Commission, to place an upper limit on the number of such members. The first case involved a proposed constitutional amendment submitted to the Commission in January 1980 (File No. SR–NYSE–80–2) which would have limited to two the number of physical access members.[5] The proposal had been initiated by a petition drafted by a group of NYSE floor brokers and endorsed in a full membership vote, despite the strong opposition of the NYSE's Board of Directors.

Commission concerns regarding the proposed rule change eventually resulted in its disapproval in August 1980, when the Commission concluded that it was unable to find the proposal consistent with Section 6(b)(5) of the Act, which requires that exchange rules be designed to remove impediments to and perfect the mechanism of a free and open market and the development of a national market system, or with Section 6(b)(8) of the Act, which requires that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[6]

III. Discussion

To approve the instant proposed rule change, the Commission must find that it is consistent with the requirements of the Act, and in particular Sections 6(b)(2), 6(b)(5) and 6(b)(8) thereunder. These sections require, respectively, (i) that exchange rules provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange; (ii) that such rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system; and (iii) that such rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Section 6(b)(2) arguably could be read to prohibit any limitation on the number of members an exchange may admit to trading. Such an inference, however, is specifically rebutted by the provisions of Section 6(c)(4) of the Act.[7] As a result, the Commission believes that the establishment of a cap on the number of physical access memberships is permissible unless the level selected is unreasonable. For the reasons discussed below, and in particular the fact that there has never been a demand for more than 24 physical access memberships, the proposed rule change does not appear inconsistent with Section 6(b)(2).

The proposal also does not appear to be inconsistent with the requirement of Section 6(b)(5) of the Act that an exchange's rules be designed to foster a free and open market and a national market system. Physical access is just one means by which a person may effect transactions through the facilities of the NYSE. As indicated above, physical presence on the floor may be obtained through purchase of an equity membership or through a leasing arrangement. Electronic access membership, while not providing for direct floor presence, permits any broker-dealer to route orders through the NYSE DOT system to the specialist or to an independent floor broker. In addition, the ITS system, which connects the NYSE with other exchange floors and the over-the-counter market, provides an additional means of access for competing market makers and other broker-dealers who are not NYSE members.[8] Finally, the significant decline in floor brokerage and institutional commission rates since 1975 has, for all practical purposes, eliminated any real economic barriers to non-members (whether broker-dealer or large institutional investors) desiring to effect transactions on the NYSE. Accordingly, the Commission does not believe the proposed rule change is inconsistent with ensuring open access to exchange markets or the development of a national market system.

The most significant questions with regard to the 24 member ceiling arise under the proscription in Section 6(b)(8) of the Act against rules that impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This was the principal basis on which the Commission disapproved the 1980 proposal to limit to two the number of physical access memberships. In the Commission's disapproval order, it found that the two member limitation was an arbitrary restriction on access to the nation's "primary" stock market that could not be justified by space, facility, safety or any other considerations.[9]

While the NYSE has not specifically asserted that, for reasons of health and safety or because of space or facilities limitations, it is unable to accommodate more than 24 physical access members, the Commission recognizes that there has traditionally been a congestion problem on the NYSE floor, given the limited amount of available trading space and the need to accommodate not only members but also a reasonable number of Exchange and member organization support personnel.[10] In addition, as a general matter, the Commission believes that it may be useful for the NYSE, in managing its facilities and in planning for future operation of the Exchange, to know in advance the maximum number of participants that can be present on the floor of the Exchange. In contrast to the earlier proposed limitation, which was set at a level below the number of

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[5] Notice was provided by Securities Exchange Act Release No. 16538 (January 28, 1980); 45 FR 7022 (January 31, 1980).

[6] Securities Exchange Act Release No. 17038 (August 1, 1980); 45 FR 52528 (August 7, 1980). Notice of the proceeding to determine whether to disapprove the proposed rule change pursuant to Section 19(b) of the Act was provided in Securities Exchange Act Release No. 16721 (April 13, 1980); 45 FR 24743 (April 10, 1980).

[7] That section provides that, a national securities exchange may (A) limit the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: Provided, however, that no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975 . . .

[8] In its 1980 disapproval order, the Commission noted that these other forms of access could not be viewed as substitutes for physical access annual memberships and therefore that their availability could not justify an arbitrary or unreasonably low ceiling on the number of such memberships. *See* Securities Exchange Act Release No. 17038 (August 1, 1980). While the Commission continues to hold to this view, it believes that the existence of these other forms of access is significant in assessing whether the instant proposed rule change impinges on an open market or a national market system.

[9] In this regard, the Commission noted that, in October 1979 the NYSE Board of Directors indicated that the floor was capable of accommodating as many as 20 additional physical access members in the near term in addition to the four approved at that term. Securities Exchange Act Release No. 17038 (August 1, 1980); 45 FR 52528 (August 7, 1980).

[10] The number 24 was drawn from NYSE Board determinations in 1979 and 1980 pursuant to Article IX Section 1(b) of the NYSE Constitution that the available physical floor space and facilities of the Exchange could support 24 physical access members. Furthermore, the Exchange stated that "there has never been any demand for more than 24 [physical access] memberships and that number has proved more than adequate to provide access to all those who prefer the physical access mode of membership to the leasing of a seat."

physical access memberships then inplace, the Commission is satisfied that the proposed limit of 24 is reasonably related to historical and anticipated demand and has a valid basis.[11]

Against these reasons for setting a ceiling on the number of physical access memberships must be balanced any burdens on competition that may result from that action. In this regard, the Commission notes that since the inception of the physical access program, there have never been more than 24 persons holding or applying for physical access memberships at any given time. Moreover, the number of physical access members declined substantially from September 1981 to September 1982 and has increased only during the period from October 1982 through January 1983.[12] It appears that the recent increase in the number of physical access members to 23—one below the proposed ceiling—which has occurred in recent months has been due primarily to a temporary and artificial disparity between the price of physical access memberships and the cost of leasing—a disparity which will be corrected upon approval of the rule changes, when the price of physical access memberships will be tied directly to the costs of leasing.

It appears that, so long as there is not a marked disparity in the cost of obtaining a lease as compared to a physical access membership, most persons seeking access to the NYSE floor prefer leasing.[13] This may be due to the greater flexibility offered by leasing in negotiating the length of the arrangement, financing terms and similar matters. As a result, to the extent the proposed rule change results in roughly equivalent pricing of leases and physical access memberships, the 24 ceiling in itself does not appear to impose a substantial burden on competition. The Commission finds that any such burden on competition imposed by the proposed rule changes is outweighed by the operational and planning needs of the Exchange.

The Commission also believes that the second aspect of the pending proposed rule changes, the new formula for determining physical access membership dues, is consistent with the Act. Dues are based on three elements, the most important of which is the average rentals stated in *bona fide* lease agreements (*i.e.*, excluding any lease not entered into at arms length or distorted by any special arrangement). As noted above, the net effect of the new pricing formula would be to make the cost of physical access membership roughly comparable to that of seat rental. In reviewing any exchange proposal to impose fees on members, the Commission is required to consider, under Section 6(b)(4) of the Act, whether the proposed rules provide for the equitable allocation of dues, fees, and other charges among its members. We believe that the proposal should essentially eliminate cost as a factor to be considered when an individual is choosing between seat leasing and physical access membership. Accordingly, we find the proposal to be consistent with Section 6(b)(4).

The final part of the proposed rule changes would provide that a portion of the physical access members' dues would be distributed equally among the 1,366 equity members.[14] This proposed distribution of physical access dues is intended to provide partial compensation to the equity members for the reduction in the value of their seats which they believe has been caused by the physical access program. The Commission does not object to this part of the NYSE proposal since it could be viewed either as a distribution of Exchange income to the 1,366 members who "own" the Exchange, or as a rebate of a portion of the $1500 annual dues, either of which would not appear to be objectionable under the statute.

IV. Conclusion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6, and, specifically, Sections 6(b)(2), 6(b)(5), 6(b)(8) and 6(c)(4) and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4936 Filed 2-25-83; 8:45 am]

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[11] The Commission's staff intends to continue to review the adequacy of access to the NYSE market in light of changing market conditions, the characteristics of the NYSE's floor and other facilities and the interests of those seeking such access, and to continue its efforts to ensure that the NYSE's membership and access policies are consistent with the requirements of the Act. Such a review, of course, would not be limited solely or even primarily to the NYSE's physical access program, which we understand has generated substantial controversy since its inception.

[12] The number of physical access members has ranged from a high of 24 in September 1981 to a low of 6 in September 1982, and currently totals 23.

[13] As of July 30, 1982, for example, there were 253 leases in effect compared to only 13 physical access members. Even in the period since October 1982, when there has been cost advantage to acquiring a physical access membership over a lease, there have been more new leases than physical access memberships (19 to 18).

[14] The Exchange resolution specifically provides that the portion of the physical access members' dues which corresponds to the average rental paid by lessees will be distributed equally among the 1,366 equity members, each of whom will receive his share in the form of twelve equal monthly increments credited against the $1,500 annual dues he would otherwise pay. Currently, physical access members' dues are assigned to the general funds of the Exchange. Based on the proposal's formula for setting physical access fees, each equity member would receive annual credits of approximately $1000 if all 24 physical access memberships were outstanding.

[Release No. 34-19514; File No. SR-NYSE-83-6]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.; Relating To Establishing Criteria for the Allocation and Reassignment of Booth Space

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on February 7, 1983, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish formal criteria to be used by the Exchange as guidelines for the allocation and reassignment of booth space on the Floor of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purposes and Statutory Basis for, the Proposed Rule Change

Booth Spaces are located around the periphery of the Trading Floor and are facilities that the Exchange provides to its members who are active on the Floor in order to transact their business. Orders from firms' customers are received in these spaces for possible execution. Execution reports are transmitted back to them in a similar manner.

Because of space limitations, logistical considerations and cost, not every member or member organization has or needs his or its own booth space. In a number of situations, two or more members "share" a space. Moreover, it is simply not possible to provide each member with booth spaces near the specialist posts where the more popular stocks are traded. Finally, because booth spaces are constructed in rows, those nearer the Trading Floor are considered more desirable than those located further down the booth aisle.

The Exchange has had informal criteria for the assignment of spaces for many years. The Exchange believes that it is now desirable to codify and publish formal criteria so that its members will have a better understanding of the reasons one member or member firm will be assigned a particular space over another, and, just as importantly, the reasons why a member or member firm might lose one or more of their assigned spaces to another.

Prior to an initial assignment of booth space to a member or member organization applications are to be submitted to the Floor Facilities Subcommittee of the Market Performance Committee which will evaluate the applications in the light of the established criteria and make assignments in conformity therewith. Any member who requests an opportunity to personally appear before the Subcommittee in connection with his application, will be afforded an opportunity to do so, and to state his position to the Subcommittee. In connection with any proposed reassignment of previously allocated booth space, any member affected by such proposed reassignment will be specifically invited to appear before the Subcommittee to discuss the matter, and to state his position, before any action is taken. Thereafter the affected member has the right to avail himself of the formal hearing procedures provided in Exchange Rule 475(a).

The specific criteria for the assignment or reassignment of booth spaces can be summarized as follows:

Criteria for the Allocation of Booth Space

- Consideration of the type of business—acting as a dealer, regional retail or institutional firm.
- The actual or anticipated volume or number of orders.
- The amount and type of equipment needed.
- The number of operational personnel needed such as members, order clerks and "$2" brokers. Administrative personnel would not be considered.

Criteria for Reassignment of Booth Space

- The practice of "Sub-leasing" be abolished. Sub-leasing is defined as a space that is not being primarily utilized by the Member who originaly was assigned the space. This would be applicable to existing sub-lease arrangements as well as those which may be proposed in the future.
- Upon the merger of two firms, the surviving firm would not automatically receive the space of the firm that was absorbed. The space would be considered for allocation.
- Periodic reviews of space utilization would be made by Exchange staff for full utilization. Under-utilization would make spaces candidates for reallocation.
- Inefficient space utilization would also make spaces candidates for reallocation.

Statutory Basis for the Proposed Rule Change

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities by: (1) allowing the Exchange to allocate booth spaces to the member or member organization that can demonstrate it has the greatest need for such spaces and (2) allowing the Exchange to reallocate booth spaces when examination indicates that the current occupant is under-utilizing them or not utilizing them efficiently.

B. Self-Regulatory Organization's Statement on Burden on Competition

As explained above, the proposed rule change will permit the Exchange to allocate booth spaces on a more equitable basis than exists today. Thus, the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 18, 1983.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4941 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 22, 1983.

In the matter of applications of the Cincinnati Stock Exchange, for Unlisted Trading Privileges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following Stocks:

Apache Corporation, Common Stock, $1.25 Par Value (File No. 7-6516)
ASA Limited, Common Stock, $.25 Rand Par Value (File No. 7-6517)
Global Marine Inc., Common Stock, $.12½ Par Value (File No. 7-6518)
Inexco Oil Co., Common Stock, $.02 Par Value (File No. 7-6519)
Motorola, Inc., Common Stock, $3 Par Value (File No. 7-6520)
Newmont Mining Corp., Common Stock, $1.60 Par Value (File No. 7-6521)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4944 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

February 22, 1983.

In the matter of applications of the Philadelphia Stock Exchange, Inc.; for Unlisted Trading Privileges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Browning-Ferris Industries, Inc., Common Stock, $.16⅔ Par Value (File No. 7-6522)
McDermott International Inc., Common Stock, $1 Par Value (File No. 7-6523)
Warner Communications Inc., Warrants to Purchase Common Stock (File No. 7-6524)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1983 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4940 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13028; (812-5258)]

Asset Management Portfolios; Filing of Application

February 17, 1983.

Notice is hereby given that Asset Management Portfolios ("Applicant"), 111 West Jackson Boulevard, Chicago, Illinois 60604, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified management investment company, filed an application on July 29, 1982, and an amendments thereto on December 22, 1982, and February 4, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the assets of each of Applicant's portfolios to be valued according to the amortized cost valuation method. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the Rules thereunder for the complete text of the provisions thereof from which an exemption is being sought.

Applicant states that it is a series company "money market fund" which initially will offer two portfolios, a Diversified Assets Portfolio and a Government Assets Portfolio, which differ in terms of their permitted investment. Investors may allocate their investment between the portfolios at their discretion and may change such allocation at any time. Applicant requests that the order sought in the application relate to each such portfolio as well as to all additional portfolios of Applicant which are money market fund portfolios. Applicant states that such order will not relate to any additional portfolios that are not money market fund portfolios.

The application states that the Diversified Assets Portfolio seeks to attain Applicant's investment objective of maximizing current income to the extent consistent with the preservation of capital and the maintenance of liquidity by investing in the following: (1) United States dollar denominated obligations of United States banks with total assets exceeding $1 billion (including obligations of foreign branches of such banks) or of the 75 largest foreign commercial banks in terms of total assets; (2) high quality commercial paper and other short-term corporate obligations, including variable amount master demand notes; (3) marketable securities issued or guaranteed as to principal and interest by the United States government or by agencies or instrumentalities thereof (including the International Bank for Reconstruction and Development); and (4) repurchase agreements pertaining thereto.

Applicant represents that the Government Assets Portfolio seeks to attain the investment objective of maximizing current income to the extent consistent with preservation of capital and the maintenance of liquidity by investing exclusively in the following: (1) Marketable securities issued or guaranteed as to principal and interest by the United States government or by agencies or instrumentalities thereof

(including the International Bank for Reconstruction and Development); and (2) repurchase agreements pertaining thereto.

Goldman, Sachs & Co. serves as the Applicant's investment adviser and distributor. Applicant also intends to enter into administration agreements with various financial institutions purauant to which such financial institutions will receive fees from the Applicant for services performed pursuant to such administration agreements. Applicant states that any securities of an administrator of Applicant to be purchased by Applicant will be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for Applicant and that are being purchased by Applicant during a comparable period of time.

The Commission has expressed its view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of money market funds which have more than 60 days remaining to maturity be valued with reference to market factors, and (2) it would be generally inconsistent with the provisions of Rule 2a–4 for a money market fund to value such portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). Although the Commission has proposed new Rule 2a–7 under the Act (Investment Company Act Release No. 12206, February 1, 1982) that would permit amortized cost valuation under certain terms and conditions, the proposed Rule has not become effective as of the date of the application. Accordingly, Applicant requests an order pursuant to Section 6(c) of the Act that would permit the amortized cost valuation of its assets.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states its belief that potential investors are vitally concerned that: (1) The net asset value of their units remain stable; and (2) that the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis. Applicant further states that it believes that use of the amortized cost valuation method will enable it to provide the required stability to its investors.

Applicant represents that prior to implementation of the amortized cost method of valuation, its Trustees will determine in good faith that in light of the characteristics referred to in the application, including the conditions to which the Applicant must adhere as set forth in any order of the Commission, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the relief referred to above:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to each portfolio's investment adviser, Applicant's Trustees undertake—as a particular responsibility within their overall duty of care owed to Applicant's unitholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize each portfolio's net asset value per unit, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

2. Included within the procedures to be adopted by the Trustees shall be the following:

(a) Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from each portfolio's $1.00 amortized cost price per unit, and the maintenance of records of such reivew.[1]

(b) In the event that such deviation from a portfolio's $1.00 amortized cost price per unit exceeds ½ of 1%, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe that the extent of any deviation from a portfolio's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing unitholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming units in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of the portfolio; reducing or withhlding dividends; or utilizing a net asset value per unit as determined by using available market quotations.

3. Each portfolio will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per unit; provided, however, that no portfolio will (a) purchase any instrument with a remaining maturity of greater than one year, except for instruments subject to repurchase agreements providing for settlement for the repurchase within one year after the portfolio's purchase of the instrument, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

5. Each portfolio will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, are of

[1] To fulfill this obligation, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Trustees in the exercise of their discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant states that the portfolio will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

comparable quality as determined by the Trustees.

6. The Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

On the basis of the foregoing, Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 11, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4853 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13027; (812–5257)]

Centerland Fund; Filing of Application

Notice is hereby given that Centerland Fund ("Applicant"), 111 West Jackson Boulevard, Chicago, Illinois 60604, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 29, 1982, and an amendment thereto on December 22, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit Applicant's assets to be valued according to the amortized cost valuation method. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below. Such persons are also referred to the Act and the rules thereunder for the complete text of the provisions thereof from which an exemption is being sought.

Applicant states that it is a "money market fund" whose investment objective is to maximize current income to the extent consistent with the preservation of capital and the maintenance of liquidity by investing exclusively in high quality money market instruments. Applicant represents that it seeks to attain its objective by investing exclusively in the following: (1) Marketable securities issued or guaranteed as to principal and interest by the United States government or by agencies or instrumentalities thereof (including the International Bank for Reconstruction and Development); (2) certificates of deposit and bankers' acceptances issued or guaranteed by the 50 largest banks in the United States; (3) high quality commercial paper and other high quality short-term corporate obligations including variable amount master demand notes; and (4) repurchase agreements pertaining thereto.

Applicant states that its Trust Agreement permits the Trustees to issue an unlimited number of full and fractional units of beneficial interest of one or more separate series ("portfolios"). Initially, the Trustees have established one portfolio, known as Portfolio A. Applicant requests that the Commission order sought in the application relate to Portfolio A as well as to all additional portfolios of the Applicant that are money market fund portfolios.

The application states that the Commission has expressed the view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of money market funds which have more than 60 days remaining to maturity be valued with reference to market factors, and (2) it would be generally inconsistent with the provisions of Rule 2a–4 for a money market fund to value such portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states its belief that potential investors are vitally concerned that (1) The net asset value of their units remain stable; and (2) the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield of a daily or weekly basis. Applicant further states that it believes that use of the amortized cost valuation method will enable it to provide the required stability to its investors.

Applicant represents that prior to implementation of the amortized cost method of valuation, its Trustees will determine in good faith that in light of the characteristics referred to in the application, including the conditions to which the Applicant must adhere as set forth in any order of the Commission, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the relief referred to above:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Trustees undertake—as a particular responsibility within their overall duty of care owed to unitholders—to establish procedures reasonably designed, taking into account current market conditions and the Fund's investment objective, to stabilize the Fund's net asset value per unit, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

2. Included within the procedures to be adopted by the Trustees shall be the following:

a. Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from Applicant's $1.00 amortized cost price

per unit, and the maintenance of records of such review.[1]

b. In the event that such deviation from Applicant's $1.00 amortized cost price per unit exceeds ½ of 1%, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

c. Where the Turstees believe that the extent of any deviation from Applicant's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing unitholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming units in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; reducing or withholding dividends; or utilizing a net asset value per unit as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per unit; *provided*, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, except for instruments subject to repurchase agreements providing for settlement for the repurchase within one year after Applicant's purchase of the instrument, nor (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustee's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, are of comparable quality as determined by the Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–10, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

On the basis of the foregoing, Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 11, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4952 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this obligation, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Trustees in the exercise of their discretion to be appropriate indicators of value, which may include among others: (i) Quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfulling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant states that it will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 13037; (812–5411)]

Citibank (Canada); Filing of Application

Notice is hereby given that Citibank (Canada) ("Applicant") c/o Shearman & Sterling 153 East 53d Street, New York, New York 10022, filed an application on December 22, 1982, and an amendment thereto on January 18, 1983, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting the Applicant, any trustee of the Applicant and any underwriter for the Applicant from all of the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a Canadian banking corporation constituted and licensed under the Bank Act of Canada ("Bank Act"). Applicant further states that it is a wholly-owned subsidiary of Citibank Overseas Investment Corporation ("Overseas"), which, in turn, is a wholly-owned subsidiary of Citibank, N.A. ("Citibank"), a national banking association organized and existing under the laws of the United States, which, in turn, is a wholly-owned subsidiary of Citicorp, a Delaware corporation and a bank holding company registered under the Bank Holding Company Act of 1956.

Applicant states that it provides a wide range of commercial banking services similar to those carried on by non-U.S. branches of Citibank. Applicant states that these activities include commercial lending; deposit-taking; investing in commercial paper, bank instruments and governmental obligations; equipment leasing; and foreign exchange trading. As of June 30, 1982, Applicant had total consolidated assets of approximately $1,493,000,000 (U.S.), of which approximately 71 percent consisted of loans and leases, approximately 25 percent of investments in securities and placements with banks, and the remainder of miscellaneous assets. According to Applicant, approximately 88 percent of its total income as of September 30, 1981 was loan related, and none of its income was derived from underwriting.

Applicant represents that as a Canadian bank chartered under the Bank Act, it is required to compile and publish annual consolidated statements of assets and liabilities, income, appropriations for contingencies and changes in shareholders' equity, together with a report of Applicant's auditors thereon, and consolidated income statements that are also sent to

the Minister of Finance and the Bank of Canada. The Applicant represents that the Inspector General of Banks ("Inspector") is permitted to examine the Applicant as often as it is deemed necessary or expedient, and in no event less than once a year, and that the Inspector has power to issue subpoenas and similar processes compelling attendance of any person to give testimony in respect of any matter under investigation and to produce documents, books and papers under such person's control. The Bank Act also governs matters such as reserve and liquidity requirements. The Applicant represents that that Bank Act does not, however, impose any specific lending limits on it.

Applicant represents that it will appoint an agent, which may be Citibank, for service of process in the city and state of New York for any actions arising out of the sale of its securities in the United States. Applicant represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York. The Applicant represents that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the securities have been paid. Applicant represents that in the case of any offerings of debt securities in the United States, such offerings will be made only pursuant to a registration statement under the Securities Act of 1933 ("1933 Act") or pursuant to an applicable exemption from registration under such Act, and any such offering will be made on the basis of disclosure documents appropriate and customary for such registration or exemption and in any event at least as comprehensive as those used in offerings of similar debt securities in the United States by United States issuers. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in such securities prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure document will be provided to such persons and in such manner as may be required by the 1933 Act and the pertinent rules and regulations thereunder.

In respect of any securities to be issued and sold in the United States without registration pursuant to Section 3(a)(3) of the 1933 Act, the Applicant, in addition to making the undertakings set forth in the immediately preceding two paragraphs, makes the further undertakings set forth in this paragraph below. Such securities will be sold in minimum denominations of $100,000, will mature not more than nine months from date of issuance and will not be payable on demand or include any provision for extension, renewal or automatic "roll-over" at the option of either holders or the Applicant. Such securities will not be advertised or offered for sale to the general public. Such securities will have received one of the three highest investment grades from at least one nationally known recognized statistical rating organization. Such securities will rank *pari passu* among themselves and equally with all other unsecured indebtedness of the Applicant (except indebtedness to Canada or any province thereof, to the extent such indebtedness is preferred by operation of law), including deposit liabilities, and ahead of its share capital. The Applicant will not offer any such security unless either: (i) It shall have received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, such security will be entitled to the appropriate exemption provided by the appropriate section of the 1933 Act, or (ii) the staff of the Commission shall have stated in writing that it would not recommend enforcement action to the Commission in the circumstances. The Applicant will ensure that each offeree of such securities will receive, prior to any sale of securities to such offeree, a memorandum describing the business of the Applicant and containing the Applicant's most recent publicly available annual financial statement (including a balance sheet, profit and loss statement, statement of source and application of funds, and notes thereto) audited in accordance with Canadian accounting principles applicable to Canadian banks and the most recent publicly available unaudited semi-annual financial statements (including the Applicant's balance sheet and summary profit and loss statement). Such memorandum will describe the significant accounting principles applicable to Canadian banks. Such memorandum will also be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in the Applicant's business and financial condition.

The Applicant consents to any order pursuant to Section 6(c) of the Act granting the relief requested being expressly conditioned upon the Applicant's compliance with the undertakings regarding disclosure documents.

Section 6(c) of the Act permits the Commission, among other things, to grant an exemption by order upon application from any provision or provisions of the Act provided such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it, and any person who might be deemed to be a trustee of or an underwriter for the Applicant, from all provisions of the Act. Applicant states that such an exemption would be consistent with the protection of investors. Applicant notes that, in addition, with respect to any offering of its securities in the United States, it would be subject to the antifraud provisions of the 1933 Act and of the Securities Exchange Act of 1934.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 15, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidafvit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-4948 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No.19511; (SR-NYSE-82-23)]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

February 17, 1983.

The New York Stock Exhange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on December 22, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend NYSE Rules 282, 284, and 289 relating to the reduction of NYSE staff involvement in processing buy-ins and to provide for the delivery of buy-ins from the initiating firm directly to the defaulting firm. While, under the proposal, the transactions would be handled broker-to-broker, the NYSE staff could still act as intermediaries when called upon to do so by parties to buy-ins.

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. 19407, January 5, 1983) and by publication in the Federal Register (48 FR 1579, January 13, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4949 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19510 (SR-PSE-82-16)]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

February 17, 1983.

The Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA 90014, submitted on December 30, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to change PSE's Constitution as follows: (1) Amend Articles II and III to increase the number of elected Governors on the Exchange's Board of Governors from fourteen to sixteen and to expand the eligibility requirements to be a Governor; (2) amend Article IV to make permanent the provision that allows persons associated with specialist firms who are not registered as specialists to serve as members of PSE's Allocation Committee; (3) amend Article V to change the definitions of "allied member" and "associated person"; (4) amend Article VI to eliminate a restriction on membership; and (5) make certain technical amendments to Articles VII and VIII. In addition, the proposed rule change would add new definitions of "control" and "person" to Section 1 of the PSE rules.

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. 19406, January 5, 1983) and by publication in the Federal Register (48 FR 1580, January 13, 1983).[1] No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereuder.

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.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4951 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-12254]

Standard Oil Co.; Application and Opportunity for Hearing

February 17, 1983.

Notice is hereby given that the Standard Oil Company (the "Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission that the trusteeships of Chemical Bank under an existing indenture that has been qualified under the Act and an Ordinance adopted by the Town of Hurley, New Mexico (the "Issuer") which has not been qualified under the Act are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as trustee under either of such instruments.

The Applicant alleges that:

(1) Applicant is an obligor under an indenture dated as of May 1, 1971 and entered into between Kennecott Corporation and Chemical Bank, Trustee (the "Original Indenture"), which indenture involved the issuance of $200,000,000 principal amount of 7¾% Debentures Due 2001 (the "Debentures"). The Original Indenture has been qualified under the Act. Pursuant to a First Supplemental Indenture to the Original Indenture dated as of July 1, 1982 (the First Supplemental Indenture and the Original Indenture being hereinafter called the "1971 Indenture"), Applicant expressly guaranteed the payment of the principal of and premium, if any, and interest on the Debentures (the "July 1982 Guarantee").

(2) The Applicant is not in default in any respect under the 1971 Indenture, the July 1982 Guarantee or under any other existing indenture.

(3) On December 16, 1982 Chemical Bank accepted the trusteeship under Ordinance No. 82-36 of the Town of Hurley, New Mexico (the "Issuer"), adopted December 8, 1982 (the "1982 Indenture"), pursuant to which there were issued $55,200,000 principal amount of Floating Rate Monthly Demand Pollution Control Revenue Bonds, Series 1982 (Kennecott Santa Fe Corporation Project) (the "Bonds").

(4) Applicant is obligated to pay the principal of, premium, if any, and interest on the Bonds pursuant to a direct guarantee contained in an Agreement of Sale dated as of December 1, 1982 among the Issuer, Kennecott Santa Fe Corporation (a subsidiary of Applicant), and Applicant, which has been assigned to Chemical Bank, as trustee) the "December 1982 Guarantee").

(5) The Bonds have not been registered under the Securities Act of 1933 on the basis of the exemption provided by Section 3(a)(2) thereof, and the 1982 Indenture has not been qualified under the Act in reliance upon Section 304 thereof.

(6) The December 1982 Guarantee, if enforced against Applicant, would rank on a parity with the obligations evidenced by the July 1982 Guarantee, and the obligations of Applicant under such Guarantees are wholly unsecured.

(7) Aside from differences among the 1971 Indenture and the 1982 Indenture

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[1] At the time this notice was published the required PSE membership approval of the constitutional changes had not yet occurred. By Amendment No. 1 to this filing submitted on February 15, 1983, the Exchange indicated that its membership approved the constitutional changes at the Exchange's annual meeting held on January 20, 1983.

as to amounts, interest rates, maturity dates, redemption dates and redemption powers, and differences in form between the 1971 Indenture and the 1982 Indenture, the terms of said instruments are substantially similar. In the opinion of the Applicant, the differences between the 1971 Indentrue and the 1982 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chemical Bank from acting as trustee under either of such instruments.

(8) Applicant has waived notice of hearing, any right to a hearing, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than March 18, 1983, submit to the Commission his views or any substantial facts bearing on this application or request that a hearing be held on such matter. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission. Persons who request a hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-4950 Filed 2-25-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 83-007]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Towing Safety Advisory Committee (TSAC). This committee advises the Secretary of Transportation on rulemaking matters related to shallow draft inland and coastal waterway navigation and towing safety.

Eight members will be appointed as follows: Two (2) members from the barge and towing industry, reflecting a geographical balance; two (2) members from maritime labor; two (2) members from shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); one (1) member from port districts, port authorities or terminal operators; and one (1) member from the mineral and oil supply vessel industry.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The committee will meet at least once a year in Washington, D.C. or another location selected by the Coast Guard.

DATE: Requests for applications should be received no later than April 14, 1983.

ADDRESS: Persons interested in applying should write to Commandant (G-CMC/44), U.S. Coast Guard Headquarters, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Captain C. M. Holland, Executive Secretary, Towing Safety Advisory Committee (G-CMC), Room 4402, U.S. Coast Guard Headquarters, 2100 Second St. SW. Washington, D.C. 20593; (202) 426-1477.

Dated: February 23, 1983.

C. M. Holland,

Captain, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

[FR Doc. 83-5038 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Consolidated Rail Corporation; Rescheduled Hearing

Note.—This document originally appeared in the **Federal Register** for Friday, February 25, 1983. It is reprinted in this issue to meet requirements for publication on the Monday/Thursday schedule assigned to the Federal Railroad Administration.

The Federal Railroad Administration (FRA) published a public notice in the **Federal Register** on February 3, 1983 (48 FR 4949) announcing that a public hearing would be held to obtain comments or views on a Consolidated Rail Corporation (Conrail) request for a waiver of compliance. The waiver request involves compliance with the procedural requirements for obtaining FRA approval of signal system modifications and is identified as RS&I Waiver Petition Docket No. 835.

The FRA originally scheduled the hearing for February 28, 1983 at 10 a.m. in Washington, DC at the request of several interested parties who sought additional time prior to the hearing, the FRA has rescheduled the hearing for March 14, 1983 at the same time and location.

Issued in Washington, DC, on February 23, 1983.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 83-5057 Filed 2-24-83; 11:06 am]

BILLING CODE 4910-06-M

Office of the Secretary

[OST Docket No. 76; Notice 83-6]

Recommendations for DOT Procedures To Perform International Aviation Functions

AGENCY: Department of Transportation (DOT).

ACTION: Provision of additional opportunity to submit comments.

SUMMARY: This notice provides an additional period of time for filing of comments on what procedures DOT should institute to administer regulatory authority over international aviation when that responsibility is transferred to DOT from the Civil Aeronautics Board (CAB).

DATE: The new deadline for comments is March 15, 1983.

ADDRESSES: Send comments to Docket Clerk (Docket No. 76), C-50, Department of Transportation, Washington, DC 20590. Comments are available for inspection and copying in the Office of the Assistant General Counsel for Regulation and Enforcement, Room 10421, Department of Transportation Headquarters Building, 400 Seventh Street, SW, Washington, DC, 9:00 a.m. to

5:30 p.m., eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Cynthia Burbank, Office of Policy and International Affairs, (202) 426–4303; or Susan McDermott, Office of the General Counsel, (202) 426–2972.

SUPPLEMENTARY INFORMATION: On December 2, 1982 (47 FR 54405), DOT invited public comment on what procedures it should institute to administer regulatory authority over international aviation when that responsibility is transferred to DOT from the CAB and established a deadline of January 15, 1983 for the receipt of those comments. On January 10, 1983, DOT extended the comment deadline until January 31, 1983, in response to a request for additional time from the Air Transport Association of America.

On January 31, 1983, the International Air Transport Association (IATA) requested that DOT allow time for reply comments to be filed. IATA indicates that several airline members of IATA were not able to develop comments to meet the January 31 deadline because of the difficulty of communication between home offices abroad and U.S. representatives.

On March 2–3, 1983, DOT will hold a seminar to permit further discussion of the procedures that DOT should follow in performing the international aviation functions of the CAB after the functions are transferred to DOT on January 1, 1985. The seminar will be open to the public and will provide opportunities for those who attend to consider various approaches to administering international aviation functions and to hear the viewpoints of others about these approaches. DOT wishes to permit interested parties to comment further as a result of the additional information and discussion that is brought out at the seminar on March 2–3.

Upon consideration of IATA's request and the new information and viewpoints that may be exchanged at the seminar, DOT has decided to provide an additional opportunity for comment. The new deadline for comment is March 15, 1983.

Issued in Washington, DC, on Feburary 23, 1983.

Franklin K. Willis,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 83-5129 Filed 2-25-83; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The Report is now available.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976); section 8d(3) of the Office of Management and Budget (OMB) Circular No. A–63 (3–27–74), as supplemented; and section 12b of Treasury Directive 10–06.E (9–2–77): A report summarizing the closed meeting activities of the Art Advisory Panel during 1982, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Administration and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

Requests for copies, at $1.20 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, D.C. 20044.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

FOR FURTHER INFORMATION CONTACT: Wiley Grant, CC:C:E:V:4, 1111 Constitution Avenue, NW., Room 5545, Washington, D.C. 20224, telephone (202) 566–4196 (Not a toll free telephone number).

Roscoe Egger,

Commissioner.

[FR Doc. 83-5043 Filed 2-25-83; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in Room 817 on March 9, 1983, and in the Administrator's Conference Room on March 10, 1983, at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research Education and Clinical Center established by the Department of Medicine and Surgery.

The sessions on March 9 will be closed to the public. The sessions on March 10 will be closed from 8:30 a.m. to 2 p.m. and open to the public from 2 p.m. to conclusion. Because seating capacity of the meeting room is limited, it will be necessary for those wishing to attend the open session to contact Mrs. Von Hudson, Program Assistant, Veterans Administration Central Office (phone 202–389–2298) prior to March 4, 1983.

The sessions will be closed since they involve discussion, examination, reference to and review of staff and consultant critiques of research and medical care protocols and programs, and similar documents in connection with the committee's evaluation of the Veterans Administration health care system. The discussion and recommendations will deal with qualifications of personnel conducting these studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In addition, the premature public disclosure of the Committee's report would significantly frustrate the agency's implementation of the requirements of 38 U.S.C. 4101(f)(2)(C). Closure of the meeting is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552(c)(6) and (9)(B).

The appearance of this notice in the **Federal Register** at least 15 calendar days prior to the meeting date has been hindered due to administrative delays within the agency.

Dated: February 18, 1983.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-4979 Filed 2-25-83; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) and OMB Circular A–63 of March 27, 1974,

notice is hereby given that the Annual Report for calendar year 1981 has been issued for the Veterans Administration Scientific Review and Evaluation Board for Rehabilitation Research and Development.

The report summarizes activities of the Board on matters related to the review, discussion and evaluation of individual investigator initiated rehabilitation research and development projects. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, D.C. 20540, and

Veterans Administration, Rehabilitation R&D Service, Room 642, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: February 18, 1983.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-4980 Filed 2-25-83; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Cooperative Studies Evaluation Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) and OMB Circular A-63 of March 27, 1974, notice is hereby given that the Annual Report for calendar year 1981 has been issued for the Veterans Administration Cooperative Studies Evaluation Committee.

The report summarizes activities of the committee on matters related to the review and evaluation of new and ongoing cooperative studies. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, D.C. 20540, and

Veterans Administration, Medical Research Service, Cooperative Studies Program, Rm. 748, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: February 18, 1983.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-4978 Filed 2-25-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 40
Monday, February 28, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, March 2, 1983.

LOCATION: Third floor hearing room, 1111 18th Street, NW., Washington, D.C.

STATUS: Open and closed to the public.

MATTERS TO BE CONSIDERED: Open to the public.

1. *Space Heaters: Exemption Applications (1-23)*
The Commission will consider Petitions SH 82-1 through SH 82-23 from state/local jurisdictions which request exemption from the preemption effect of the safety standard for unvented, gas-fired space heaters.

2. *Aluminum Wire Petition AP 80-2*
The staff will brief the Commission on issues related to Petition AP 80-2 from Mr. Jesse Aaronstein, Ph.D., which requests a rule under Section 27(e), CPSA, requiring manufacturers of electrical wiring devices to furnish consumers with information about possible potential overheating hazards when incompatible receptacles and switches are used with aluminum wiring.

Closed to the public:

3. *Enforcement Matter OS #3740*
The staff will brief the Commission on issues related to enforcement matter OS #3740.

(For a recorded message containing the latest agenda information, call 301-492-5709)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, Md. 20207; 301-492-6800.

[S-276-83 Filed 2-24-83; 3:16 pm]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, March 1, 1983.

PLACE: Commission Conference Room 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. Report on Commission Operations (optional).
3. Freedom of Information Act Appeal No. 82-12-FOIA-191-NY, concerning a request for confidential witness statements from a closed ADEA file.
4. Freedom of Information Act Appeal No. 82-12-FOIA-65-CL, concerning a request for materials in a closed charge file maintained as a result of an investigation of an age discrimination charge.
5. Freedom of Information Act Appeal No. 82-12-FOIA-146-PA, concerning materials from a closed ADEA charge file.
6. Freedom of Information Act Appeal No. 82-12-FOIA-045-IN, concerning a request for access to records in an open Title VII case file.
7. Freedom of Information Act Appeal Nos. 82-12-FOIA-242 and 243, concerning a request for documents with information on disciplinary actions.
8. EEOC's Semiannual Regulatory Agenda.
9. Section 601, Introduction, EEOC Compliance Manual, Volume II, EEOC Order 915.

Closed:

1. Litigation Authorization; General Counsel Recommendations.
2. Outstanding Charges in Systemic Programs.

(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 McCall, Executive Secretary to the Commission at (202 634-6748.

Issued: February 23, 1983.

[S-272-83 Filed 2-24-83; 10:37 am]

BILLING CODE 6570-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:35 p.m. on Friday, February 18, 1983, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Merchants and Farmers State Bank, Blythe, California, which was closed by the Superintendent of Banks for the State of California on Friday, February 18, 1983; (2) accept the bid for the transaction submitted by Credit Bank, Blythe, California, a newly-chartered State nonmember bank; (3) approve the applications of Credit Bank, Blythe, California, for Federal deposit insurance, and for consent to purchase the assets of and to assume the liability to pay deposits made in Merchants and Farmers State Bank, Blythe, California; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 22, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-275-83 Filed 2-24-83; 11:44 am]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, March 3, 1983.

PLACE: Board room, sixth floor, 1700 G Street, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202–377–6679).

MATTERS TO BE CONSIDERED: Merger and Retention of Facilities—Home Federal Savings and Loan Association, Terre Haute, Indiana *into* Valley Federal Savings and Loan Association, Terre Haute, Indiana.

[No. 19, February 24, 1983]

[S–277–83 Filed 224–83–; 3:30 pm]

BILLING CODE 6720–01–M

5

FEDERAL TRADE COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 6634, February 14, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., February 11,1983.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously scheduled open meeting of February 11, 1983, to Tuesday, February 15, 1983, 10 a.m.

[S–274–83 Filed 2–24–83; 10:52 am]

BILLING CODE 6750–01–M

6

POSTAL SERVICE

(Board of Governors)

Meetings

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunsine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, March 7 and 8:30 a.m. on Tuesday, March 8, 1983, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, Washington, D.C. As indicated in the following paragraph, the Monday meeting is closed to public observation. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

At its meetings of January 31 and February 1, 1983, the Board voted in accordance with the provisions of the Sunshine Act to close to public observation its meeting scheduled for March 7. One agenda item of the meeting to be closed concerns strategic planning. The other agenda item concerns a discussion of proposed changes in the E–COM rate and mail classification provisions.

Agenda

Monday Afternoon (Closed)

1. Strategic Planning—Future rate adjustments.
2. Discussion of proposed changes in E–COM rate and mail classification provisions.

Tuesday Morning (Open)

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Boards's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board in brought up under this item.)

3. Officer Compensation.

(The Board will consider approval of a recommendation by the Postmaster General regarding adjustments in officer compensation.)

4. Update on Legislative Activities.

(Mr. Horgan, Assistant Postmaster General for Government Relations, will update the Board on legislative activities.)

5. Report of Law Department.

(Mr. Cox, General Counsel, will brief the Board on developments in the Law Department.)

6. Report on Administration Group Programs.

(Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will provide a report on certain programs of the Administration Group.)

7. Consideration of Revised E–COM Policy Statement.

(The Board will discuss issues of general Postal Service policy that have arisen in connection with E–COM service.)

8. Discussion of Heritage Foundation Report.

(The Board will discuss a recent report of the Heritage Foundation concerning the Postal Service.)

9. Update on Automation and ZIP+4.

(Mr. Jellison will brief the Board on the status of the ZIP+4 program.)

10. Consideration of Tentative Agenda for the April 4/5 meeting.

Louis A. Cox,

Secretary.

[S–273–83 Filed 2–24–83; 10:39 am]

BILLING CODE 7710–12–M

federal register

Monday
February 28, 1983

Part II

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; U.S. Breeding Population of Wood Stork; Status

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the U.S. Breeding Population of the Wood Stork

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes the U.S. breeding population of the wood stork (*Mycteria americana*) to be an Endangered species pursuant to the Endangered Species Act. This action is being taken because U.S. breeding populations of the wood stork have declined over 75 percent from their 1930 levels. If this trend continues, the birds are expected to become extirpated as U.S. breeders by the turn of the century. The proposed rule would provide the protection of the Endangered Species Act to this species. The Service seeks comments and data from the public on this proposal.

DATES: Comments by the public must be received by April 29, 1983.

Public hearing requests must be received by April 14, 1983.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Endangered Species Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Endangered Species Field Station at the above address.

FOR FURTHER INFORMATION CONTACT: For further information on this proposal, contact Mr. David Peterson, Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (phone 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION: The wood stork (*Mycteria americana*) is a large, long-legged, white wading bird with an unfeathered head and a stout bill. It is the only species of true stork breeding in the U.S. Wood storks frequent freshwater and brackish wetlands, feeding primarily on small fishes which they locate by groping with their beaks (Kahl, 1964). They usually nest in cypress and mangrove swamps.

The wood stork occurs from northern Argentina to the southern United States. The present U.S. breeding population is disjunct from the population which breeds from Mexico to South America. Wood storks from Mexico and Central America disperse into the southern U.S. after breeding. This proposed regulation would afford the protection of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) to the U.S. population of wood storks residing and breeding east of the Alabama-Mississippi State line. Breeding in the U.S. is now restricted to Florida, southeastern Georgia, and South Carolina. Nesting formerly occurred in Texas, Louisiana, Mississippi, and Alabama. U.S. breeding pairs of the wood stork have declined from over 20,000 in the 1930's to 4,800 in 1980 (Ogden and Patty, 1981). About 3600 pairs appear to have attempted breeding in the 1982 nesting season. This decline is believed to have resulted from man's alteration of wetlands and water management activities. Nesting failures have become increasingly frequent in recent decades, particularly in the historically large south Florida wood stork rookeries.

Background

A notice of review of the status of the U.S. breeding population of the wood stork was published in the February 16, 1982, **Federal Register** (47 FR 6675–77). This notice solicited biological information on status of the wood stork, as well as information on activities which might be detrimental to this species or be affected by listing of or Critical Habitat designation for the species. The notice also listed major wood stork rookeries and feeding areas. Twenty Florida rookeries, three Georgia rookeries, and three Florida feeding areas were described. Presently 90 percent of the U.S. breeding wood storks nest in 14 Florida counties located throughout the State.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal list. The Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act.

These factors and their application to the U.S. breeding population of the wood stork are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The decline of the wood stork as a U.S. breeding bird is believed to be primarily due to the loss of suitable feeding habitat (Ogden and Patty, 1981). This is especially true for the south Florida rookeries, where repeated nesting failures have occurred despite protection afforded the rookeries. Feeding areas in south Florida have decreased by about 35 percent since 1900 due to man's alteration of wetlands. Additionally, manmade levees, canals, and floodgates have greatly changed natural water regimes in south Florida. Optimal water regimes for the wood stork involve periods of flooding, during which prey fish populations increase, alternating with drying periods, during which fish are concentrated at high densities during the nesting season. Loss of nesting habitat (primarily cypress swamps) may be affecting wood storks in central Florida, where nesting in non-native trees and in manmade impoundments has been occurring recently.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not available.

C. *Disease or predation.* Raccoon predation has sometimes been severe at certain central Florida rookeries. In 1981, raccoons destroyed all 168 wood stork nests at a rookery in Hillsborough County. Water levels dropped under nest trees, providing easy access for the raccoons.

D. *Inadequacy of existing regulatory mechanisms.* The wood stork is protected by the Migratory Bird Treaty Act of 1918 and is State-listed as Endangered in Florida, Threatened in South Carolina, and as a species of special concern in Alabama. The Migratory Bird Treaty Act prohibits taking or possession of the wood stork except by permit. The Alabama designation presently provides no protection to the wood stork. The Florida and South Carolina designation prohibits take, except by permit, and provide for certain conservation efforts. The Florida Game and Fresh Water Fish Commission currently has one biologist studying the wood stork in order to recommend conservation measures. South Carolina has no specific recovery efforts but intends to continue monitoring nesting in the State. No coordinating recovery efforts among the States are presently in effect.

E. *Other natural or manmade factors affecting its continued existence.* A prolonged period of drought in Florida has probably adversely affected wood stork reproduction for the past few years. Heavy rainfall during the nesting season, causing flooding of the feeding areas, apparently caused almost complete nest abandonment at one

rookery (Moore Island) in the spring of 1982.

Disturbance by humans during the nesting season has been observed to cause adult wood storks at some rookeries to leave their nests. This exposes eggs and young birds to predation by gulls and fish crows, and can result in heavy mortality.

Significant pesticide levels have been reported in this species, with some eggshell thinning, but this apparently has not yet adversely affected reproduction (Ohlendorff *et al.*, 1978).

Critical Habitat

Section 4(a)(1) of the Act requires the Secretary to designate Critical Habitat for a species, to the maximum extent prudent and determinable, concurrent with the determination that such species is an Endangered or Threatened species. Critical Habitat is presently considered neither prudent nor determinable for the U.S. breeding population of the wood stork for the following reasons:

1. Since localities of some wood stork rookeries and feeding areas change over time, rigidly defined Critical Habitat boundaries around presently utilized nesting and feeding areas may not be adequate for long-term conservation of this species. Continuing environmental changes, both man-made and natural, are expected to cause further changes in wood stork nesting and feeding sites. Therefore, it is not presently possible to enclose all areas which may be necessary to the wood stork's long-term survival within Critical Habitat boundaries. The Governor of Florida, through his Game and Fresh Water Fish Commission, has recommended that Critical Habitat designation for this species be postponed until the Commission completes ongoing studies on the stork's habitat requirements. Since these studies will not be completed for 2 to 3 years, the Commission has suggested that the wood stork be federally listed at this time without Critical Habitat designation.

2. The wood stork's feeding areas may be separated by large (up to 130 km) distances from its rookeries. Additionally, post-breeding dispersal of the U.S. breeding birds extends throughout most of the southeastern U.S. Critical Habitat inclusions of such large areas, even though they may be important in the bird's biology, would be misleading because the stork uses only very limited resources over these large areas.

3. Wood storks are sensitive to disturbance during the breeding season. Observers have often avoided publicizing exact locality data, particularly for recently discovered rookeries. Publication of Critical Habitat maps in the **Federal Register**, as required by Section 4(b)(5) of the Act, would increase the chance that wood stork rookeries would be subjected to human disturbance or vandalism, causing decreased productivity and, perhaps, increased mortality.

Effects of This Rule

In addition to the effects discussed above, the effects of this proposal, if published as a final rule, would include but would not necessarily be limited to those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Subsection 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize proposed species. If made final, this rule would require Federal agencies, in consultation with and with the assistance of the Secretary, to insure that their activities are not likely to jeopardize the continued existence of this species. Pursuant to these requirements, no major effects are anticipated from the listing of the wood stork. The principal agency affected would be the U.S. Army Corps of Engineers, which issues permits for the discharge of dredged or fill material in U.S. waters under Section 404 of the Clean Water Act of 1977. The Corps also carries out Congressionally authorized water development projects.

In the future, the proposal and listing of the wood stork may in some cases influence either Corps decisions to grant Section 404 permits or the mitigation measures conditional to the granting of permits.

Proposal of the wood stork as an Endangered species may also affect one Corps project in particular, the Shark River Slough Study. This project seeks alternatives to provide a more natural water flow to Everglades National Park. Water regimes favorable to wood stork nesting may therefore be given higher priority. This, however, is not a conflict but a reinforcement of one of the purposes of the project.

The proposal and listing of the wood stork as an Endangered species could also affect future permitting activities by the Environmental Protection Agency, under Section 402 of the Clean Water Act (National Pollutant Discharge Elimination System). No present conflict with these permits is known to the Service.

All prohibition is Section 9 of the Act, implemented at 50 CFR 7.21, would apply to the wood stork. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate of 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 Endangered species under certain Circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23.

With regard to the prohibitions on taking, import and export, interstate commerce and sale, no effects are expected should this proposed rule be made final. This is because this species is already protected by the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et. seq.*), which prohibits such activities except under permit.

Due to presently existing local, State, and Federal constraints on development of wetlands and floodplains in Florida, Federal listing of the U.S. breeding population of the wood stork will place few additional constraints upon the environmental regulation and planning in effect in the State.

Conservation of the wood stork would allow the species to continue to serve as an ecological indicator of wetland health and to provide pleasure as a natural attraction, particularly in Florida. The wood stork, as one of the most sensitive wading birds to changes in wetland hydrologic regimes, is valuable as an indicator of wetland health and the welfare of other waders such as herons and egrets. The wood stork is also a natural feature of great interest to birdwatchers and tourists. It is the only North American breeding stork and is an important attraction at heavily visited natural areas such as Everglades National Park and Corkscrew Swamp Sanctuary in south Florida.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this porposal. It is on file in the Service's Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207, and may be examined by appointment, during regular business hours (7:45–4:15 pm). This assessment will be used as the basis for a decision as to whether or not this is 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 (implemented at 40 CFR Parts 1500–08).

Public Comments Solicited

The Service intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered of Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. Biological or other relevant data concerning any threat (or the lack thereof) to the wood stork;
2. The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 4 of the Act;
3. Additional information concerning the range and distribution of this species; and
4. Current or planned activities in the subject area, and their possible impact on the wood stork.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing to the Endangered Species Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive Jacksonville, Florida 32207.

Final promulgation of the regulation on the wood stork will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Author

The primary author of this proposed rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

References

Kahl, M. P. 1064. Food ecology of the wood stork *(Mycteria americana)* in Florida. Ecol. Monogr. 34: 97–117.

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Ohlendorff, H. M., E. E. Klaas, and T. E. Kaiser. 1978. Organochlorine residues and eggshell thinning in Wood Storks and Anhingas. Wilson Bull. 90(4): 608–618.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

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

2. It is proposed to amend § 17.11(h) by adding, in alphabetical order the following under the list of BIRDS.

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Stork, wood	*Mycteria americana*	U.S.A. (CA, AZ, TX, to Carolinas), Mexico, Central and South America	U.S.A. (AL, FL, GA, SC)	E		NA	NA
*	*	*	*	*	*		*

Dated: February 1, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-5010 Filed 2-25-83; 8:45 am]

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federal register

Monday
February 28, 1983

Part III

Environmental Protection Agency

National Interim Primary Drinking Water Regulations; Trihalomethanes

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[WH-FRL-2253-6]

National Interim Primary Drinking Water Regulations; Trihalomethanes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule identifies the best technology, treatment techniques or other means that the Administrator of the Environmental Protection Agency (EPA) finds to be generally available, taking costs into consideration, pursuant to Section 1415(a)(1)(A) of the Safe Drinking Water Act (SDWA), for use by community water systems in achieving compliance with the National Interim Primary Drinking Water Regulation that establishes a maximum contaminant level (MCL) for total trihalomethanes (TTHMs). EPA promulgated the TTHM regulation on November 29, 1979 (44 FR 68624) specifying an MCL and monitoring requirements for all public water systems serving 10,000 or more persons. That rule did not identify pursuant to Section 1415(a)(1)(A) what were the best treatment methods generally available that a system subject to that rule could be required to install and/or use to come into compliance with the TTHM MCL. Today's rule applies to all public water systems that serve more than 10,000 persons and specifies what treatment methods a system may be required to install and/or use to come into compliance with the TTHM MCL. The rule further specifies criteria by which EPA and states with primary enforcement responsibility that issue variances, shall issue variances and compliance schedules to systems pursuant to Section 1415(a)(1)(A).

DATE: This rule is effective on March 30, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Director, Criteria and Standards Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. (202-472-5016).

SUPPLEMENTARY INFORMATION:

I. Authority

This regulation is promulgated under the authority of Sections 1415 and 1450 of the SDWA, as amended, 42 U.S.C. 300g-4, 300j-9.

II. Purpose of the Rulemaking

The purpose of the rule being promulgated today is to identify pursuant to Section 1415(a)(1)(A) of the SDWA, the best technologies, treatment techniques or other means that the Administrator of EPA has determined to be generally available, taking costs into consideration, for use by community water systems in achieving compliance with the MCL for TTHMs (also referred to as "Group I" treatment methods) (40 CFR 142.60(a)). In 1979, EPA promulgated a rule which established an MCL (0.10mg/L) for TTHMs pursuant to Section 1412(a) of the SDWA, 42 U.S.C. 300g-1(a), as an amendment to the National Interim Primary Drinking Water Regulations (44 FR 68624, 68641) hereinafter "TTHM Rule"). The TTHM Rule is applicable to all community water systems that add a disinfectant to their treatment process and serve 10,000 or more persons. Today's rule also establishes in § 142.60(b), criteria and procedures that EPA or a state with primary enforcement responsibility (hereinafter referred to as "primacy state") that issues variances shall follow in making the determination as to whether a system shall be required to install and/or use a "generally available" treatment method identified in § 142.60(a).

In § 142.60(c), EPA has identified five additional treatment methods *not* determined to be "generally available" pursuant to § 1415(a)(1)(A) but which may be available to some systems (also referred to as "Group II" treatment methods). If a system receives a variance after complying with the procedures in § 142.60 (a) and (b), the variance-issuing authority must prescribe a schedule, within one year, including increments of progress aimed at bringing the system into compliance with the MCL. See Section 1415(A)(1)(A) (i) and (ii). Sections 142.60 (c) and (d) specify criteria that EPA and primacy states that issue variances shall apply in determining what requirements to include in a compliance schedule accompanying a variance from the TTHM Rule.

EPA proposed today's rule on March 5, 1982. 47 FR 9796. The preamble to the proposed rule explained in detail the history and purpose of this rulemaking and the discussion in that preamble is incorporated into today's preamble as part of the statement of basis and purpose for this rulemaking. In addition, EPA prepared the document, "Technologies and Costs for the Removal of Trihalomethanes from Drinking Water", (hereinafter referred to as "Technologies and Costs"), as support for decisions implemented by today's rule.

The March 5, 1982 **Federal Register** notice solicited public comment on the proposed rule and support document. The Agency received comments from eight individuals or groups during the 45-day public comment period. The comments generally supported the proposed rule. EPA has carefully considered all of the public comments on the proposed rule. All significant comments and the Agency's response are presented below in Section III. The final rule includes one modification in response to public comment. In § 142.60(a) the Agency has deleted hydrogen peroxide as a substitute pre-oxidant for chlorine. The Agency's reasons for making the change are discussed in Section III, paragraph 21, below. In all other respects the Agency decided not to make changes to the proposed rule.

III. Response to Comments

1. One commenter expressed the concern that the Agency listing of "best generally available treatment methods" might be interpreted to inhibit or potentially stifle innovative solutions to TTHM problems. Specifically, the commenter mentioned polymer coagulants which have been shown to reduce trihalomethane formation potential in laboratory experiments.[1,2] The commenter suggested that while polymer coagulants are somewhat experimental and should not be specifically included as part of Group I, No. 3 (Improved Existing Coagulation) at this time, the technology should not be excluded for potential use.

• The Agency has no intention to preclude the use of any experimental or innovative approach for reducing TTHMs or THM precursor material. In the preamble to the proposal of the regulation being promulgated today, EPA specifically encouraged the development of new treatment methods and stated that systems "always have the option of proposing studies" of methods not listed in § 142.60(a) or (c). 47 FR 9798. The Agency encourages systems that experience difficulty in complying with the TTHM Rule to

[1] *The Removal of Trihalomethane Precursors With Ultrafine Resins, Final Report* EPA Project No. 79-316, E.G. Isacoff, Rohm and Haas Company, Spring House, Pa., Project Officer: O. Thomas Love, Jr., Drinking Water Research Division, MERL, U.S. EPA, Cincinnati, Ohio, March, 1981.

[2] *Trihalomethane Removal by Coagulation Techniques in a Softening Process, Draft Report.* J.C. Thurrott, *et al.* City of Daytona Beach, Florida. Project Officer: O. Thomas Love, Jr., Drinking Water Research Division, MERL, U.S. EPA, Cincinnati, Ohio, April 1982.

carefully examine the other technologies and present alternative and innovative solutions as part of the compliance schedules that are negotiated with EPA or the State (whichever has primary enforcement authority).

2. Several commenters pointed out that the March 5, 1982 proposal did not express the degree of concern about preservation of bacteriological quality that had been articulated in other Agency statements about modifications to existing treatment for the control of TTHMs. These commenters requested a reaffirmation of the Agency's position and suggested that EPA find improved ways to communicate this position to systems that may be making treatment modifications in response to the TTHM Rule.

• This rule does not contravene the provisions of the November 29, 1979 Final Rule for the Control of Trihalomethanes In Drinking Water (44 FR 68624) as they relate to the protection of the bacteriological quality of drinking water. Specifically, these concerns are noted in 40 CFR 141.30(f) (44 FR 68624), and are reemphasized here. EPA, in cooperation with states and public water systems, will make every effort to assure adherence to those provisions.

3. One commenter stated that while EPA (or a primacy State) may require the use of one or more Group I (generally available) treatment methods as a condition of maintaining a variance from the TTHM MCL, such a requirement should be imposed through a reasonable compliance schedule, taking local conditions into account.

• There is no statutory requirement for the development of compliance schedules associated with the use of Group I treatment methods. However, a compliance schedule may be issued. In some cases, a system that agrees to install one or more of the Group I treatment methods will need additional time to demonstrate and/or install such methods. As EPA noted in the proposal preamble, the primacy authority may grant the variance accompanied by a compliance schedule for the *expeditious* installation of the designated treatment. 47 FR 9797. However, there should not be lengthy delays in the demonstration and installation of Group I treatment methods since these are all "generally available methods". On the other hand, more time might be appropriate with regard to § 142.60(c) compliance schedules which are related to situations where a system has installed one or more of the "technically available and effective" methods and still cannot comply with the TTHM MCL or has demonstrated that none of these methods are available or effective. In such a situation, the primacy authority must give the non-compliant system, as part of a variance, a compliance schedule intended to eventually bring the system into compliance. Since these § 142.60(c) methods are not "generally available methods" more time might be needed to assess and possibly install and use them.

4. A commenter stated that the cost estimates for alternate water sources under the EPA scenario (raw water transmission line of 7.5 miles) are prohibitive. In most instances an alternate source of raw water will not be a feasible or realistic alternative for systems attempting to comply with the TTHM MCL.

• In developing this rule, the very site-specific nature of the availability of alternate sources of raw water dictated that this compliance approach be designated as a Group II ("potentially available") as opposed to Group I ("generally available") treatment method. The assumption of 7.5 miles was used for costing purposes and was assumed to be near the maximum distance that could be reasonably considered by any system that might be able to utilize this option. It is unlikely that many of the large systems covered by this regulation would have ready access to nearby previously untapped water sources. As this treatment method is included in Group II, it is appropriate that costs be considered in making a decision to require use of this method.

5. A commenter stated that "technological and economic considerations should always be an important consideration in the issuance of variances from National Interim Primary Drinking Water Regulations. Where a nationally applicable standard may simply be unachievable because of site-specific problems, the variance issuing authority needs the flexibility to be able to take those problems into consideration and resolve the matter on a national and sound scientific basis. The proposed rule, properly implemented, should achieve that balance".

• Sound judgment should always be applied to the determination of which treatment methods should be utilized in complying with the TTHM Rule. EPA believes that today's rule provides for the exercise of flexibility and sound judgment. However, it must be recognized that the Administrator is specifically charged with the responsibility of "taking costs into consideration" in establishing primary drinking water regulations and in making determinations as to which treatment methods are "generally available" for meeting SDWA regulations. Therefore, the issue of affordability of any "generally available" treatment method has been considered in the Administrator's determination and should not be a consideration in the case-by-case issuance of variances. Such systems must apply to the primacy agency for an exemption which specifically allows for the consideration of economic factors and authorizes the granting of time for the system to raise additional capital to install the necessary treatment. The grounds for not installing a "generally available" treatment method (40 CFR 142.60(a)) are limited to technical problems of availability and effectiveness.

6. One commenter criticized the proposal for "eliminating" the Group II treatment methods, GAC and BAC from "the list" of generally available treatment methods.

• The commenter's criticism was based on the assumption that a discussion of all available or potentially available treatment methods for reducing levels of TTHMs included in the preamble to the TTHM Rule (44 FR 68636) constituted EPA's determination of "generally available" treatment methods pursuant to Section 1415(a)(1)(A). That preamble discussion included mention of the Group I treatment methods as well as the Group II methods, GAC and BAC. This discussion is apparently the basis of the commenter's criticism that today's rule is "eliminating" some treatment methods from "the list". However, as EPA explained in the proposal preamble, EPA never intended the discussion at 44 FR 68636 to be a statutory determination for the purposes of Section 1415(a)(1)(A). 47 FR 9796. It would be totally inappropriate for the Agency to have made such a statutory determination with no reference to Section 1415(a)(1)(A) or codifying such determinations and the procedures for issuance of such variances. EPA, by this rulemaking, has provided the necessary opportunity for public comment on such determination, an opportunity not provided in the Agency's "discussion" in the preamble to the TTHM Rule. In this rulemaking, EPA has explained the basis for its determination of five "generally available" treatment methods. The Agency has also explained why it did not find the other treatment methods listed in the preamble to the TTHM Rule to be "generally available". Each of these latter treatment methods has one or more performance characteristics that do not make them appropriate as "generally available" treatment methods. Therefore, EPA has not

eliminated treatment methods from any list of generally available methods. No list developed pursuant to Section 1415(a)(1)(A) existed prior to this rulemaking.

A full discussion of the Agency's technical and economic considerations in selecting the "generally available" treatment methods from among all the available treatment methods is presented in the "Technologies and Costs" document. The following discussion summarizes some of the Agency's reasons for determining that the Group II treatment methods, GAC and BAC were not generally available treatment methods.

In the case of off-line water storage, the Agency determined that consideration would always have to be given as to the availability of land clear of a flood plain that would fit reasonably into the geometry of the existing system. In most large urban systems, the acquisition of such property is essentially impossible. Additionally, for ground water systems, the creation of an impoundment would subject that water to surface influences that might actually increase the THM precursor content of the supply. Such sanitary engineering concerns dictate that a decision to require the use of this treatment method should be made only after study and analysis of the specific situation for which the use is proposed. It is clear that while this technology is potentially available, it would not be "generally available" for many of the systems subject to the TTHM Rule.

Similarly, while data indicate that aeration would be useful for THM control in some systems, various technical factors such as the potential for THM formation after treatment and during distribution, evaporation rates and freezing problems under specific climatic condition (since THMs and high THM potential would likely be associated with surface waters that are more affected by climatic change than ground water) as well as potential changes in the corrosivity of aerated water indicate that the applicability of aeration would be highly site specific. These concerns mitigate against a specific finding of "generally available" under section 1415(a)(1)(A) for TTHM control. However, these concerns do not imply that aeration would not be generally appropriate and effective for other applications such as the control of volatile synthetic organic chemical contamination of ground water. See 47 FR 9350, 9354 (March 4, 1982).

A requirement to introduce clarification where not currently practiced would involve creation of an entire conventional filtration system or possibly a softening plant for some water systems. There is the possibility that coagulation could be added to a direct filtration system, but such an application would be an anomaly. The magnitude of this type of action by a water system requires extensive study and analysis. In the support document "Technologies and Costs," the Agency assumed that only systems with health-related water quality problems in addition to TTHMs, e.g., turbidity and/or microbiological contamination, would choose this compliance alternative. While conventional treatment and softening are clearly available, the Agency did not believe that it would be appropriate to include such treatment methods on a list of generally available methods for reducing TTHMs or THM precursors.

The fourth treatment method listed, consideration of alternative sources of raw water, is clearly not "generally available" for many systems. Additionally, even for those systems that could find alternative sources of water with lower levels of THM precursors, the development of such supplies would usually take long periods of time and one or more of the Group I technologies should be used during the period that alternate sources are being considered.

The Agency did not list the use of ozone as being "generally available" because of the lack of experience in the United States, the mixed results obtained in experimental studies of ozone and TTHM formation potential, and the requirement of most States for a persistent distribution residual.[3] Ozone does have a high lethality coefficient for pathogenic organisms and enteroviruses and the technology may be appropriate for use by some systems. By including ozonation in the Group II treatment methods the Agency anticipates that some systems will choose to install ozone treatment after sufficient study.

The final treatment methods that were reviewed but not included in the designation of "generally available" are the use of granular-activated carbon (GAC) and modifications to that technology through the application of ozone prior to filtration referred to as biologically activated carbon (BAC). The Agency has made a significant effort to clarify all of the technology issues that have complicated the use of GAC or BAC for TTHMs and THM precursor removal. Recent EPA studies indicate that GAC in the sand replacement mode of operation is often inappropriate due to the short performance life and high frequency of regeneration that is required in order to achieve substantial TTHM or THM precursor control.[4] The determination not to include GAC or BAC in Groups I or II took into consideration costs that might be involved, but primarily was made due to the complexities of the modifications to prior unit operations, i.e., disinfection, and in the logistics of the carbon replacement.

The application that has been considered most seriously is the installation of post-filter contactors (referred to in some of the regulatory documentation as the high-cost option for GAC and BAC). The more recent Agency analysis of the systems affected by the TTHM Rule assumes that approximately six (6) systems, out of approximately 2,300 covered by the regulation, might need to consider this technology after all other approaches have been determined to be inadequate.[5] The use of GAC in large public water systems for TTHM or THM precursor control is clearly greater in its demand for monitoring, operation and maintenance than any of the other treatment methods. Lastly, the additional burden of on-site regeneration would need to be developed and demonstrated as it has only been practiced in full scale at one (1) location in the United States. Thus, it was determined that the requirement to use this approach should be deferred. However, EPA does not intend to imply by this finding that this technology would not be generally appropriate and effective for other treatment applications, such as the control of volatile synthetic organic chemical contaminants in ground water. See 47 FR 9350.

7. One commenter questioned whether EPA's criteria for determining generally available treatment methods and issuing variances complied with the SDWA. The commenter suggested that EPA inappropriately required that a "generally available" treatment method be a "widely used water treatment technology" of "relatively low cost" and "within the technical capabilities of the vast majority of public water systems subject to the TTHM rule." The commenter also stated that the Agency illegally established a "cost-benefit" test as part of the decision process for determining whether those treatment methods that have been designated under 40 CFR 142.60(c) need be studied

[3] Trussell, R.R., and Umphres, M.D., "The Formation of Trihalomethanes," Journal of the American Water Works Association, 70, 604-612 (November 1978).

[4] "Technologies and Costs at 16.

[5] *Id.* at A-8.

and/or installed as part of a variance compliance schedule.

• The discussion in the preamble regarding the characteristics of the five generally available treatment methods was not intended to be a prerequisite for a determination that a treatment method was generally available. 47 FR 9797. In discussing why it believed each of the Group I treatment methods was generally available, the Agency noted that each is "a widely recognized water treatment technology, is relatively low cost, and is within the technical capabilities of the vast majority of pubic water systems subject to the TTHM Rule." *Id.* These factors supported EPA's determination that the five treatment methods were generally available, taking costs into consideration, as required by Section 1415(a)(1)(A). The presence of these factors supports a determination of general availability.

The criteria for determining whether a treatment method is "generally available" are: (1) Whether most systems subject to the regulation would have access to the treatment method and (2) whether the treatment method would be "appropriate" and "effective" for the intended use. The Agency determined that most systems subject to the TTHM Rule would have access to all of the five Group I treatment methods and that the methods would be within the technical capabilities of most of those systems. Contrary to the commenter's assertion, the statement that the five Group I treatment methods would be within the technical capabilities of the "vast majority" of systems, merely recognized that fact and was not intended to be established as a future prerequisite for any determination of general availability. Since the TTHM Rule is only applicable to systems serving more than 10,000 persons, it was more likely that the generally available treatment methods would be within the technical capabilities of the "vast majority" of this uniform group of systems. However, future determinations of "generally available" treatment methods for control of other contaminants may not be within the technical capabilities of the vast majority of systems subject to the regulation because other regulations are applicable to all systems, including very small systems.

The Agency also determined that each of the five Group I treatment methods were appropriate and effective for the intended use of reducing TTHMs or THM precursors in a wide range of circumstances. Each treatment method is a "widely recognized treatment technology" that can be used to effectively reduce TTHMs and THM precursors. The commenter incorrectly stated that the Agency required the method to be "widely used" to be a generally available treatment method. The Agency did not require a method to be "widely used" in supporting a finding of general availability. If a treatment is widely recognized as an appropriate and effective treatment method for the intended use, it need not be "widely used" to be considered generally available. The "Technologies and Costs" document presents a full discussion on the appropriateness and effectiveness of the five generally available treatment methods.

Finally, EPA considered the costs of application and use in identifying the generally available treatment methods. The Agency found that each of the five generally available treatment methods were of relatively low cost. This finding supported but did not dictate the determination that each method was generally available "taking costs into consideration." While any determination of generally available treatment methods must consider costs, it is not a requirment that such methods be of relatively low cost. Any future determination of generally available methods for reducing other contaminants would have to be judged on the costs in each case and a decision made as to the reasonableness of those costs.

The second part of this comment was a criticism of the criteria in 40 CFR 142.60 (c) and (d) for determining which of the five treatment methods listed in that subsection a system would be required to study and/or install as part of a compliance schedule. Sections 142.60 (c) and (d) provide that the primacy agency before requiring use of a § 142.60(c) method must determine that such treatment method is technically feasible and economically reasonable and will achieve TTHM reductions commensurate with the costs of installation and/or use of the treatment method. The commenter's criticisms deals with the cost considerations in the criteria, the commenter arguing that such case-by-case "economic considerations are impermissibly factored into the variance decision." The Agency agrees with the commenter, that case-by-case economic considerations are not appropriate in determining whether a system must use a "generally available" treatment method. However, the Agency stated several times in the preamble to the proposal, that the five treatment methods identified in § 142.60(c) were *not* determined to be generally available. Therefore, case-by-case cost considerations are not precluded by the SDWA. The Agency listed the treatment methods in § 142.60(c) for use by EPA and primacy states in determining what should be required of a system that has used each available and effective treatment method listed in § 142.60(a) and still is not in compliance with the TTHM MCL. Section 1415(a)(1)(A) requires the primacy agency to prescribe a compliance schedule for such a system, with increments of progress designed to bring the system into ultimate compliance. At this stage, the Agency believes it is appropriate to consider the reasonableness of the cost of using additional (not "generally available") treatment methods and in requiring a reduction in TTHMs commensurate with the costs of installing and/or using such treatment methods. This is consistent with the SDWA and represents sound regulatory judgment.

8. One commenter criticized the economic analysis in "Technologies and Cost" for making infrequent reference to the findings of an Economic Analysis prepared during the TTHM rulemaking, and for using six rather than nine system size categories, thereby making comparison between the two documents difficult.

• The purpose of the "Technologies and Costs" document was to provide a realistic basis for assessing the effect of today's regulation on the application of the TTHM Rule. For this purpose, the document was designed for comparison to the final (September, 1979) "Economic Impact Analysis of the Promulgated Regulation for Drinking Water" prepared with the TTHM Rule. The commenter cited an earlier economic impact analysis prepared in 1977. 43 FR 29135. Except in cases where new and more accurate data were available (occurence data and treatment costs) or where economic conditions had changed (interest rates), the approach and assumptions used in the 1979 and 1982 analyses are consistent. In particular, both the 1979 "Economic Impact Analysis" and the "Technologies and Costs" document use six, not nine, system size categories. The change to six size categories was made in 1978 to provide more detailed data concerning the systems affected by the TTHM Rule. For example, many of the original nine system size categories applied to systems not covered by the TTHM Rule (i.e., because they served less than 10,000 people). All six system size categories in the 1979 "Economic Impact Analysis" and the 1982 "Technologies and Costs" document apply to regulated systems serving over 10,000 people. The

capital and operating cost data concerning the six system size categories are presented in a comparable format in the 1982 analysis.[6]

9. One commenter asserted that in the "Technologies and Costs" document, the amortization period was reduced to 20 years from the 40 years used in earlier analyses, thereby inflating the costs of capital-intensive technologies.

• Amortization periods were not changed between the 1979 "Economic Impact Analysis" and the 1982 "Technologies and Costs" document. In both cases the economic analysis of the regulations was performed in two phases—a unit cost analysis based on engineering cost-estimating practices and a national economic impact analysis based on PTM (a financial model of the drinking water utility industry). The comment incorrectly compared the amortization period used in the unit cost analysis to the depreciation period used in the national economic impact analysis.

The technique applied in the unit-cost analysis was to develop a capital recovery factor which represents the percent of capital costs that must be paid each year in order to complete both principal and interest payments by the end of the amortization period. This technique provides an approximation of annual capital-related costs that is useful in developing engineering cost estimates. The 20-year amortization period was used in the unit cost analysis of *both* the TTHM Rule and the variance regulation being promulgated today. Exhibit C–2 in the 1979 Economic Impact Analysis expressly states that a 20-year amortization period was used in developing unit costs.[7]

The national economic impact analysis uses a complex cost-estimating procedure that is based on industry financial accounting principles. Capital-related charges in this analysis are based on a number of financial parameters including equipment depreciation rates, debt payment periods, rates of return on debt and equity, tax provisions and the industry's capital structure. The 40-year period applies to the plant and equipment depreciation period for financial purposes and was used in both the 1979 and the 1982 analyses.

The only capital cost factors that were changed between the 1979 and the 1982 analyses were interest rates and returns on equity. These changes reflect the actual increase in interest rates and returns that took place between 1979 and 1982. The analysis of the national costs of the TTHM Rule, included in the "Technologies and Costs" document, incorporates these changes (as well as changes in engineering cost estimates and water quality data) so that national cost comparisons can be made on a common basis.

10. A commenter suggested that the design criteria in the treatment cost estimates inappropriately assumed a complete substitution of chloramines for chlorine, thereby reducing the protection from bacterial contamination normally offered by the use of chlorine.

• The "Technologies and Cost" document does not assume that there would be a complete substitution of chloramines for chlorine. The assumption for purposes of developing uniform costs, was that prechlorination of the raw water entering a water treatment plant was to occur at an average dosage of 2.5 mg/1. Chloramines would be used as a residual disinfectant to provide protection in the distribution system and to prevent the formation of additional trihalomethanes. The discussion in "Technologies and Costs" at C–2 specifically refers to the use of chloramination as the *residual* disinfection process and therefore the Agency believes that the issue is not ambiguous.

It was also assumed that in some specific situations chloramines would replace the prechlorine addition with post-chlorine still being applied at an average dosage of 2.5 mg/1 to maintain an adequate residual in the distribution system. The costs are essentially the same for either assumption.

11. One commenter critized the fact that chloramines are listed as the first of the "best generally available treatment methods for reducing TTHMs".

• The order in which treatment methods are listed within § 142.60(a) or 142.60(c) should not be interpreted as representing any comparative order of performance effectiveness or preference among the other treatment methods in the respective sections. The order of listing does not carry any Agency recommendation as to either the effectiveness or appropriateness of one treatment method over another method in the same section.

The Agency continues to believe that chloramines would normally be used for secondary disinfection following a period in which the water has been exposed to stronger disinfectants. It has been demonstrated many times that when considering comparative lethality coefficients in laboratory experiments of chloramines (or combined chlorine compounds) versus free chlorine, chloramines may require a large increase in contact time to inactivate coliform bacteria and enteric pathogens as compared to chlorine. However, the enteroviruses are much more resistant than coliforms to both free residual chlorine and chloramines (especially as hypochlorite). This issue is detailed in the references to "Technologies and Cost".

On the other hand, until the 1940's, a significant fraction of those systems that used chlorine were using chloramines and those systems have developed a history of performance and effectiveness. This general finding of the effectiveness does not alter in any way the Agency's reservations about modifications to disinfection practices. These concerns are articulated in 40 CFR 141.30(f) (44 FR 68642) and are re-emphasized here.

12. One commenter suggested that the cost analysis of the ozone technology was flawed in that the 1977 Economic Impact Analysis stated that the economies of scale for chlorine dioxide were less than ozone and that this characteristic was not demonstrated in the "Technologies and Costs" document.

• Since the 1977 document was prepared, the Agency has gathered additional information on both chlorine dioxide and ozone costs. The "Technologies and Costs" document was based upon these new data and a review of available literature including the practices at Monroe, Michigan and the EPA report (600/2–78–147) that addresses the use of both chlorine dioxide and ozone. However, the major difference between the 1977 and 1982 analyses was the cost of electrical power. In the use of ozone, greater than 80% of the operating costs can be attributed to the cost of electricity. Chlorine dioxide has a similar predominant cost characteristic, i.e., chemical usage. The cost for power assumed in the 1977 document was $(.02–.032) per kwh. The value for power in the 1982 analysis was $.06 per kwh, two to three times the 1977 values. Similarly, the cost assumption in the 1977 analysis for sodium chlorite, the chemical used in making chlorine dioxide, was from $0.62 to $1.08 per pound, and the chlorine cost was between $0.07 and $0.20 per pound of material. The 1982 analysis assumed $1.40 for sodium chlorite and $0.125 for chlorine, respectively. Therefore, while the economies of scale are demonstrated in the capital costing for both the 1977 and 1982 analyses, those economies are

[6] "Technologies and Costs" at A–8.

[7] "Economic Impact Analysis of the Promulgated Trihalomethane Regulation for Drinking Water," United States Environmental Protection Agency, EPA–520/9–79–022, September, 1979 at C–3.

not as dramatic in the 1982 analysis of total costs per thousand gallons of treated water due to the large increases in power costs since 1977 as compared to the moderate increases in the chemical costs for chlorine dioxide during the same period.

13. One commenter suggested that 10 mg/1 of powdered activated carbon (PAC) would be ineffective for the removal of TTHMs and THM precursors except for concentrations near the MCL. Another commenter stated that the annual dosage requirement, if applied intermittently or for a short duration, could result in unrealistic dosages from an operational standpoint.

• The Agency believes that both commenters have misinterpreted the intent of the "Technologies and Costs" document on this issue. However, because of these several constructions, further definition of the Agency intent is appropriate. The "Technologies and Costs" document states:

> However, if a system has only seasonally high TTHM concentrations in its water, the addition of high dosages of PAC at such times may allow a system to bring the annual TTHM average below the MCL. Moreover, there are situations where a system's TTHMs exceed the MCL for short periods of time. In these instances, the intermittent use of PAC may be appropriate and cost-effective. Based on these considerations, the Agency has concluded that the intermittent use of PAC at dosages not in excess of 10 mg/1 on an annual average basis would be appropriate, effective and economically reasonable. *

PAC can be used in some situations for the removal of TTHMs and the reduction of THM precursor material. PAC is a common technology with a very long history in the American water industry. Many systems that are subject to the TTHM Rule have PAC capability. However, many such systems do not presently have the ability to continuously feed PAC for extended periods at concentrations that would have significant impact upon the TTHM and THM precursor concentrations. Therefore, episodic uses of relatively high concentrations of PAC may prove advantageous for some systems, but continuous treatment of the water at effective PAC doses would only be appropriate for systems that have excess feed, storage and sludge handling capacity and which have experience with the use of this chemical at very high application rates. On the other hand, most systems that have any PAC capability can tolerate relatively high dosage rates of PAC for limited periods of time and the Agency proposal was intended to cover both situations articulated above, i.e., increased feed rates for systems which have excess PAC capability and seasonal or intermittent use for systems with limited PAC facilities. In either case, the engineering consensus was that there should be some limit established as to how much additional continuous feed rate could be considered "generally available", as well as how much carbon should be fed during periods of elevated TTHM or THM precursor concentrations. That engineering judgment, for the purposes of determining "generally available" treatment, is 10 mg/l, about the amount that would be used for control of taste, odor, color or other applications on a continuous basis, or intermittent feed rates that would generally exceed 10 mg/l but which, when aggregated, would not exceed an amount equivalent to a continuous 10 mg/l feed rate for the affected system for the entire year.

It should be kept in mind that the proposal of March 5, 1982, (47 FR 9796) amends Part 142, Title 40 of the Code of Federal Regulations, and does not amend the November 29, 1979, TTHM Rule (44 FR 68624). Therefore, the monitoring requirements are unchanged from the original regulation. States or EPA, whichever has primacy, should assure that sampling for compliance purposes reflects typical water quality and is not done only during periods of PAC application. Thus, they may choose to require a special monitoring regimen as part of the plan required of each system before major treatment modifications are made. 40 CFR 141.30(f).

14. One commenter noted that while sludge disposal was mentioned as a constraint in several of the treatment methods, the cost estimates in the "Technologies and Costs" document did not include the sludge disposal costs associated with additional powdered activated carbon or coagulant application.

• In the "Technologies and Costs" document at C–4 and C–6, it is specifically mentioned that additional sludge handling facilities will be required. The analysis done for the March 5, 1982, proposal assumed that 12% of the operating costs for the addition of PAC, coagulant or coagulant aid would be required to pay for additional sludge disposal. 47 FR 9796. This cost (12%) reflects an average of the existing Agency experience and was tested against several case studies for verification as part of the 1982 analysis.

15. A commenter requested clarification of why the Agency found that granular activated carbon (GAC) with a removal efficiency of 80% was not effective for control of TTHMs or THM precursors, while other treatment methods with lesser removal efficiencies were found to be effective for the removal of TTHMs.

• In determining which treatment methods were "generally available", the Agency evaluated a number of technical considerations. These considerations included industry operating experience, removal efficiency, potential interference with other unit operations, as well as assumptions about how the specific treatment method might be utilized. Removal efficiency was only one of the considerations evaluated for assessing treatment methods and each technology must be evaluated in the total context of the anticipated application. In the case of GAC, the lack of adequate specific capacity when installed in the sand replacement mode, the dearth of full scale TTHM removal data as well as the large logistic burden incurred by the system when installing and operating GAC in the post-filtration contractor mode (the high level of removal efficiency noted by the commentor can only be achieved with frequent regeneration of the carbon) mitigated against a finding that this technology was "generally available," specifically for control of TTHMs or THM precursors. As noted in the proposal of today's regulation, GAC was not found to be a particularly effective technology for the removal of TTHMs or THM precursor material. 47 FR 9798. However, that finding should not be interpreted to mean that GAC could not be effective for some systems or that GAC does not have other more appropriate applications such as for controlling drinking water contamination by synthetic organic contaminants in ground water. See 47 FR 9350.

16. One commenter requested clarification as to the rationale for the assumption that the costs of GAC should all be attributed to the removal of TTHMs or THM precursor material when only a portion of the costs of improving clarification were applied to compliance with the TTHM Rule.

• It can be assumed that the installation of GAC might provide additional benefits in addition to reduction of TTHMs or THM precursors. Certainly the experience of water systems that have installed GAC in the sand replacement mode for taste and odor control supports that position. However, that experience as well as Agency experience with GAC, does not support the assumption that these benefits would always accrue or that the installation of GAC would be the most appropriate treatment option to garner

* "Technologies and Costs" at 8.

those benefits. Additionally, taste and odor control as well as other aesthetic benefits that might be derived from the use of GAC are included in the "secondary regulations", and do not pose adverse health effects.

Conversely, the non-TTHM benefits of improved coagulation are enhanced removal of turbidity and bacteria. As there are National Interim Primary Drinking Water Regulations for both of these contaminants, the Agency believes it is appropriate to give a cost credit for reduction and removal of contaminants which may have adverse health effects and for which usage could be necessitated by regulation. Additionally, these benefits will always accrue upon the improvement of coagulation and such improvement is the most appropriate approach to these problems. In developing the assumptions that dictated the costs for these technologies and the other technologies that are mentioned in the "Technologies and Costs" document, the Agency considered peripheral benefits. However, it was determined that credit for such benefits could only be acknowledged when those benefits were uniformly predictable. Such uniformity is not present in carbon usage while the benefits associated with improved clarification are consistent and highly predictable.

17. One commenter criticized the variance procedures in 40 CFR 140.60(b) that authorize the primacy agency to make the determination as to whether a generally available treatment method was, in fact, available and effective for a system applying for a variance. The commenter alleged that such procedures allow the variance-issuer to make case-by-case redeterminations regarding the availability of treatment methods found to be "generally available" by the Administrator, with the possible result being a non-compliant system not being required to install and/or use any of the "generally available" treatment methods.

• The procedure provided in § 142.60(b) is consistent with and is to be used in conjunction with the current regulations containing procedures for granting variances (40 CFR Part 142, Subpart E or analogous State regulations in primacy States). EPA believes that the criteria in § 142.60(b) are appropriate for consideration in determining whether a system need install and/or use a "generally available" treatment method. EPA discussed the criteria, whether the method is "available and effective" for the individual system, in the preamble to the proposal. 47 FR 9797. These criteria are defined as whether the treatment methods would be "technically appropriate and technically feasible" for the system and would result in more than a "small or insignificant" reduction in TTHMs. Section 142.60(b) places the burden on the system applying for the variance to establish that a generally available treatment method is not "available and effective" for that system to avoid a requirement to install and/or use the method.

EPA believes that the criteria in § 142.60(b) authorizing the primacy agency to relieve a system of an obligation to install and/or use a treatment method that is not available and effective for that system are both reasonable and necessary. Systems should not be expected to install treatment methods that would interfere with other unit operations that control health-related contaminants, treatment methods that would be operationally unstable due to existing treatment configurations, or treatment methods that would only reduce TTHMs by a negligible or trivial amount. The commenter recognized the need for "some flexibility" in the variance process and EPA believes its process includes the right amount of flexibility while ensuring the installation of treatment methods where appropriate.

18. One commenter noted that the language "Administrator or primacy state," was used throughout the March 5, 1982 proposal. This commenter stated that this language was ambiguous and should be replaced with "the primacy agency" to indicate that either the Administrator (in a State that has not accepted primary enforcement authority) or the State (in a State that has accepted primary enforcement authority) but not both, would make variance determinations.

• The Agency believes that the language of the March 5, 1982 proposal makes clear when the Administrator or the State is authorized to act and that both may not be issuing TTHM variances in the same State. The proposed rule provides that the Administrator will issue variances "in a State that does not have primary enforcement responsibility" and that a State will exercise this authority when that State has primary enforcement responsibility. See § 142.60(b).

19. Two commenters noted that it is inappropriate to grant "variances accompanied by compliance schedules for situations where treatment methods defined in § 142.60(a) are available, but not yet started or completed". These commenters stated that this seems to be a situation that is appropriate for the use of an "exemption" under Section 1416 of the SDWA.

• Before issuing a variance, the variance-issuing authority must find that a variance is warranted, i.e., that because of the characteristics of the raw water source the system will not be able to meet the MCL despite application of generally available treatment methods (Section 1415(a)(1)(A). 42 U.S.C. 300g–4; 40 CFR 142.40(a) and analagous primacy state regulations). While the system may have already installed the treatment method, the finding could be made prior to such installation.

The Agency previously indicated that the treatment methods should be in place to demonstrate that non-compliance is attributable to poor source water quality, therefore entitling the system to a variance. (See Memorandum of General Counsel, dated May 21, 1979.) However, the Agency believes that this finding may be made prior to the methods actually being operational. The important fact is that the "available and effective" methods be installed in order to reduce the levels of TTHMs. In some cases, additional time may be needed to complete installation of the required treatment methods. However, EPA expects any such compliance schedule would require the expeditious installation of such treatment methods.

An exemption is appropriate in a situation where a noncompliant system needs additional time to come into compliance. It is also assumed that the systems receiving an exemption will achieve compliance with the MCL by the statutory date for termination of the exemption. Systems receiving variances are assumed not to be able to comply with the MCL after installation of "generally available" treatment methods. The non-compliance may extend beyond the statutory deadlines for exemptions. Therefore, the Agency believes a variance accompanied by a compliance schedule requiring expeditious installation of "generally available" treatment methods is most appropriate for systems that will be unable to comply with the TTHM MCL even after installation of such treatment methods.

20. One commenter asserted that there were inadequate performance and cost data on the technologies listed in §§ 142.60(a) and 142.60(c). As an example, the commenter cited offline water storage as not being adequately documented.

Comprehensive data support the findings of the Administrator. The "Interim Treatment Guide for the Control of Chloroform and Other

Trihalomethanes" (EPA, June, 1976, Symons, J.M., et al.) and the subsequent publication, "Treatment Techniques for Controlling Trihalomethane in Drinking Water" (EPA–600/2–81–156, September, 1981) plus their references provide a complete discussion of the treatment methods available for TTHM and THM precursor control. The "Technologies and Costs" document that accompanied the March 5, 1982 proposal is a synopsis of all available information, both from research and actual experience. The references to this latter document, found in Appendix D, pages 1–4, provide sufficient documentation for the Administrator's findings. In the example presented by the commenter (off-line water storage), the support document refers the reader to reference No. 16. The reference (EPA–600/2–81–156, September, 1981), substantiates both the effectiveness of the technology for removal of THM precursor material and the designation of this technology as Group II ("potentially available"), due to site specific considerations.

21. One commenter noted that the Agency had listed hydrogen peroxide as a generally available treatment while no manufacturer of hydrogen peroxide has its product approved for potable water use. The commenter stated that the use of hydrogen peroxide was inappropriately listed as "generally available".

Hydrogen peroxide was listed as a potential substitute pre-oxidant for chlorine as the fourth "generally available" treatment method in § 142.60(a). The Agency agrees that the limited experience with hydrogen peroxide as an alternate pre-oxidant does not support its inclusion in § 142.60(a). Therefore, the Agency has decided to remove hydrogen peroxide from the listing of those alternate pre-oxidants available to substitute for chlorine. However, hydrogen peroxide is a readily available oxidant that may be useful in some specific situations and the elimination of this chemical from the list of "generally available" treatments should not deter systems from evaluating its effectiveness as a "pre-oxidant".

22. One commenter noted "there is insufficient guidance to systems which have high brominated trihalomethanes," and suggested that "your generally available technologies are not as effective on the brominated THMs as they are on chloroform."

Excess bromide in raw water does contribute special problems in systems where organic THM precursors are also present. The purpose of the variance procedure is to address cases where systems cannot comply with the MCL and the effect of bromide in the water would be a factor to consider in determining the performance and the technologies that would be effective.

23. A commenter suggested that this rule would be more appropriate as a memorandum in the Agency's "Water Supply Guidance Series".

By this rule, the Administrator has determined, pursuant to Section 1415(a)(1)(A) of the SDWA, what are the best treatment methods generally available, taking costs into consideration, for systems in meeting the TTHM MCL. This determination is binding on the States and systems and therefore must be issued as regulation and not as guidance.

24. One commenter stated that some trihalomethanes are not genotoxic. Therefore, it was the commenter's conclusion that "while their presence in drinking water may be esthetically unpleasant, we do not think that such materials constitute a detectable cancer risk." Another commenter noted that "in the vacuum of sound data on health effects of the trihalomethanes, the economic impacts of the TTHM MCL should be minimized to the greatest extent practicable."

The health basis of the TTHM Rule is not an issue in the regulation being promulgated today. EPA specifically stated in the preamble to the proposal that the variance rule was not intended to allow a reopening of issues related to the health basis of the TTHM Rule. 47 FR 9798. The health basis of the TTHM Rule was throughly addressed in the preambles to the proposal notices of February 9, 1978 (43 FR 5758) and July 6, 1978 (43 FR 29135), as well as being rearticulated in the "Statement of Basis and Purpose" that accompanied the November 29, 1979 Final Rule for the Control of Trihalomethanes in Drinking Water (44 FR 68624).

IV. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that today's rule is not a major rule under the terms of the Executive Order. This proposal specifies the treatment methods a system not in compliance with the TTHM MCL would be required to install and/or use to come into compliance with the TTHM Rule. The five best treatment methods "generally available" were selected in part because of their low cost. EPA estimated that total compliance cost with the TTHM Rule was $19 million. A large portion of this cost was attributed to systems using the high cost treatment methods GAC and BAC. Today's rule provides that EPA will not require any systems to install GAC or BAC to reduce TTHMS. Today's rule should lower the cost impact of the TTHM Rule, rather than impose costs. This proposal was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act requires all Federal agencies to consider the effects of their regulation on "small entities," i.e., small businesses, small organizations and small governmental jurisdictions. Section 603 of the Act directs agencies to propose for public comment a "regulatory flexibility analysis" for any regulation which will cause a significant impact on a substantial number of small entities.

EPA does not believe that this rule will have significant economic impacts on a substantial number of small entities. The TTHM Rule applies to public water systems serving more than 10,000 people and thus some small businesses and governmental jurisdictions are covered by that Rule. In today's rule, however, EPA has limited the treatment methods that a system may be required to install and/or use to comply with the TTHM Rule. These treatment methods do not include the potentially high cost treatment methods, GAC and BAC. Therefore, today's rule should lessen the projected impact of the TTHM Rule on those small community public water systems affected.

List of Subjects in 40 CFR Part 142

Administrative practice and procedure, Chemicals, Radiation protection, Reporting and record keeping requirements, Water supply.

Dated: February 17, 1983.

Anne M. Gorsuch,

Administrator.

PART 142—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

Accordingly, Part 142, Title 40, of the Code of Federal Regulations, is hereby amended to add the following new Subpart G:

Subpart G—Identification of Best Technology, Treatment Techniques or Other Means Generally Available

§ 142.60 Variances from the maximum contaminant level for total trihalomethanes.

(a) The Administrator, pursuant to Section 1415(a)(1)(A) of the Act, hereby identifies the following as the best

technology, treatment techiques or other means generally available for achieving compliance with the maximum contaminant level for total trihalomethanes (Section 141.12(c)):

(1) Use of chloramines as an alternate or supplemental disinfectant or oxidant.

(2) Use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant.

(3) Improved existing clarification for THM precursor reduction.

(4) Moving the point of chlorination to reduce TTHM formation and, where necessary, substituting for the use of chlorine as a pre-oxidant chloramines, chlorine dioxide or potassium permanganate.

(5) Use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently at dosages not to exceed 10 mg/L on an annual average basis.

(b) The Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances shall require a community water system to install and/or use any treatment method identified in § 142.60(a) as a condition for granting a variance unless the Administrator or primacy state determines that such treatment method identified in § 142.60(a) is not available and effective for TTHM control for the system. A treatment method shall not be considered to be "available and effective" for an individual system if the treatment method would not be technically appropriate and technically feasible for that system or would only result in a marginal reduction in TTHM for the system. If, upon application by a system for a variance, the Administrator or primacy state that issues variances determines that none of the treatment methods identified in § 142.60(a) is available and effective for the system, that system shall be entitled to a variance under the provisions of Section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information intending to demonstrate that a treatment method is not available and effective for TTHM control for that system, the Administrator or primacy state shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

(c) Pursuant to § 142.43(c)–(g) or corresponding state regulations, the Administrator or primacy state that issues variances shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods (1) to determine the probability that any of these methods will significantly reduce the level of TTHM for that system, and (2) if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the TTHM reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:

Introduction of off-line water storage for THM precursor reduction.

Aeration for TTHM reduction, where geographically and environmentally appropriate.

Introduction of clarification where not currently practiced.

Consideration of alternative sources of raw water.

Use of ozone as an alternate or supplemental disinfectant or oxidant.

(d) If the Administrator or primacy state that issues variances determines that a treatment method identified in § 142.60(c) is technically feasible, economically reasonable and will achieve TTHM reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Administrator or primacy state shall require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of Section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination shall be based upon studies by the system and other relevant information. In no event shall the Administrator require a system to install and/or use a treatment method not described in § 142.60 (a) or (c) to obtain or maintain a variance from the TTHM Rule or in connection with any variance compliance schedule.

(Sec. 1415(a)(1)(A) of the Safe Drinking Water Act)

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federal register

Monday
February 28, 1983

Part IV

Department of Transportation

Office of the Secretary

Participation by Minority Business Enterprises in Department of Transportation Programs; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[OST Docket No. 64c; Notice No. 83-7]

Participation by Minority Business Enterprises in Department of Transportation Programs

AGENCY: Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would implement section 105(f) of the Surface Transportation Assistance Act of 1982, which provides that ten percent of funds authorized to be appropriated by the Act be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals. The proposed rule would add a new Subpart D to the Department's existing minority business enterprise rule, permitting recipients of financial assistance from the Department to comply with the new statutory requirement with a minimum of disruption to existing administrative practice.

DATE: Comments must be received by the Department by March 21, 1983.

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 64c, Department of Transportation, 400 7th St., SW., Room 10421, Washington, D.C. 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time and date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 9:00 a.m. to 5:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., S.W., Room 10421, Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Background

The Statute and its Scope

This proposed rule would implement section 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424). Section 105(f) provides as follows:

> Except to the extent that the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act (15 U.S.C. section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto.

The provision resulted from an amendment introduced by Rep. Parren Mitchell. Senator Alan Cranston sponsored a similar amendment. According to the floor statements made by Rep. Mitchell and Senator Cranston, the amendment was intended to ensure that minorities participated as fully as possible in the economic benefits resulting from the Act. The floor statements made specific reference to the minority set-aside provision of the Public Works Employment Act Amendments of 1977 (Pub. L. 95-28) on which section 105(f) was modeled.

In mentioning the serious unemployment problem among minorities and in judging that a "set aside" provision like section 105(f) was "the most direct way to assure that * * * disadvantaged business owners participate to the fullest extent possible" in the benefits of the Act (*Daily Congressional Record* S 14211, December 8, 1982), Congress explicitly adopted a rationale for affirmative action. By referring to the 1977 provision, Congress also took into account the more lengthy discussion of the need for such action which preceded its enactment. The Department takes notice of the history of Congressional action underlying the 1977 provision, much of which is cited in *Fullilove* v. *Klutznick*, 448 U.S. 448 (1980), which upheld the constitutionality of the 1977 provision and its implementation by the Department of Commerce. The Department has taken this background into account in its implementation of section 105(f).

The Department has carefully considered the question of the scope and applicability of section 105(f). This question arises because of the ambiguity of the reference in section 105(f) to funds authorized to be appropriated under "this Act." In context, "this Act" could be taken to mean the entire Surface Transportation Assistance Act of 1982 or only Title I of the Act, titled the "Highway Improvement Act of 1982."

Given this ambiguity, the Department has looked to the legislative history of the section. While this history is not extensive, it does indicate a strong concern by Rep. Mitchell and Senator Cranston that the jobs and other economic benefits flowing from the gasoline user fee help members of minority groups. The user fee goes toward major construction programs funded by the Surface Transportation Assistance Act in highways, highway safety and mass transportation. These are the programs in which job creation is most likely to occur. Construing the statute to cover these programs is the interpretation most consistent with the intent of Congress.

Limiting the application of section 105(f) to programs under the Highway Improvement Act of 1982 would omit coverage of most UMTA programs as well as of the provisions of section 202 of the Act for bridge replacement and rehabilitation and elimination of hazards. Since these programs receive substantial funding from the gasoline user fee and assist major construction projects with significant potential for the creation of jobs and business opportunities, these programs come within the intent of Congress of section 105(f).

The most direct statement in the legislative history concerning the applicability of section 105(f) supports this interpretation of its intended coverage. In his floor statement, Rep. Mitchell said that his amendment was intended to apply to the "Surface Transportation Assistance At of 1982" (the title of the entire Act). The Department regards the legislative history of the section as clearly resolving the ambiguity concerning the applicability of the section in favor of coverage of the entire Surface Transportation Assistance Act of 1982.

This view of the statute creates one important practical problem. Intrepreting the statute to apply to all programs under the Surface Transportation Assistance Act of 1982 would result in coverage of a number of programs unaffected by the gasoline user fee and/or which have relatively minor potential for job and business opportunity creation. The Department believes that Congress did not believe that coverage of programs of this kind was significant. In the Department's judgment, the MBE contracting opportunities gained by coverage of these programs would not justify the administrative burdens invovled for recipients. For this reason, the Department proposes to determine, under the Secretary's discretionary authority in section 105(f) ("Except to the extent that the Secretary determines otherwise * * *"), that this subpart will not apply to the following provisions of the Act:

Section 203—NHTSA Highway Safety Grant Program

Section 402—Grants to States for Commercial Motor Vehicle Safety Programs

Section 421—State Recreational Boating
Section 422—Reforestation
Section 423—Promotion of Fisheries
Section 426—Airway and Airport Development Program

The Department seeks comments concerning whether these proposed exclusions from the coverage of section 105(f) and this subpart are appropriate.

Section 105(f) applies not only to the federal-aid highway program but also to the direct Federal highway program operated by FHWA. Under this program FHWA contracts with private firms to build certain highways. Neither the existing 49 CFR Part 23 nor this proposed rule apply to the direct Federal program, since it is not a Federal financial assistance program. However, FHWA seeks MBE participation in the direct Federal program through means including sections 8(a) and 8(d) of the Small Business Act. In recent years, the level of MBE participation in the program has exceeded ten percent. FHWA is committed to meeting or exceeding the ten percent participation requirement of section 105(f) in the direct Federal program. In the same sense, UMTA will apply section 105(f) to its direct procurement activities.

Relationship to Existing Minority Business Enterprise Rule

The Department's minority business enterprise (MBE) rule (49 CFR Part 23) continues fully in effect. Promulgation of a final rule based on this NPRM (which would result in a new Subpart D of 49 CFR Part 23) would have no effect on recipients of Federal financial assistance from the Fedeal Aviation Administration, the National Highway Traffic Safety Administration and the Federal Railroad Administration. These recipients would continue to implement 49 CFR Part 23 without change.

The new subpart would affect recipients of Federal financial assistance from FHWA and UMTA programs funded through the Surface Transportation Assistance Act of 1982. UMTA and FHWA recipients would set overall goals as provided in the new subpart rather than as provided in the existing MBE regulation. However, this change and the associated amendments contained in this NPRM (relating to such matters as definitions, waivers, and compliance) would be the only changes FHWA and UMTA recipients would make in implementing their MBE programs.

In all other respects, FHWA and UMTA recipients would continue to implement the existing 49 CFR Part 23. For example, recipients would continue to operate their programs and goals for businesses owned and controlled by women without change. Recipients would continue to award individual contracts in the same way as now provided by 49 CFR Part 23, requiring the apparent successful competitor for a contract to make good faith efforts to meet contract goals. Recipients would also continue to examine and certify the eligibility of MBE's as they do now.

The major change made by this subpart would concern overall goals. Under the existing regulation, overall goals are simply an administrative mechanism designed to help recipients meet their obligation to ensure that MBEs have an equal opportunity to compete for and perform DOT-assisted contracts. The present overall goals are established by recipients as a benchmark against which they can measure the performance of their MBE programs. The goals represent a level of MBE participation which it is reasonable to expect, given fully equal opportunities for MBEs. Failure to meet an overall goal is not regarded as noncompliance with the regulation. Rather, it is an indication that administrative changes or improvements in a recipient's MBE program may be necessary.

Under the proposed rule, the Department sets recipients' overall goals at a minimum of ten percent, unless a waiver is granted in accordance with paragraph 23.65. Failure by a recipient to meet its overall goal is regarded as noncompliance with the regulation. The overall goals proposed by this NPRM, unlike the overall goals of the existing rule, go beyond seeking to ensure equal opportunities for MBEs. Rather, the overall goals of the proposed subpart implement the commitment of section 105(f) to an affirmative action policy designed to overcome the effects of past discrimination and disadvantage. As proper for a policy of this kind, it is limited in duration.

Section-By-Section Analysis

Section 23.61 Purpose.

This section states the purpose of the proposed Subpart D, which is to implement section 105(f). As a matter of policy, the Department places a high priority on the development and support of MBEs, and will enforce strictly MBE participation requirements of section 105(f).

Section 23.62 Applicability.

This section describes the applicability of the proposed Subpart D to FHWA and UMTA programs. In order to be covered by this subpart (i.e., to be part of the base from which the overall goals of § 23.64 are calculated), funds must meet three criteria. First, the funds must have been authorized by the appropriate statutory provisions. With respect to FHWA programs, the appropriate provisions are Title I and section 202 of Title II of the Act. Title I funds most FHWA programs; section 202 funds the bridge rehabilitation and replacement and hazard elimination programs. Section 202 funds are considered Federal-aid highway funds for purposes of this subpart.

With respect to UMTA programs, the appropriate provisions of the Act are Title I (insofar as it authorizes appropriations for transit substitute projects under the Interstate transfer program) and Title III (which funds most UMTA programs). The Department recognizes that applying these MBE requirements to section 9 funds would to some extent impinge upon the concept of freeing "block grants" from Federally-imposed requirements. However, given that Congress intended section 105(f) to apply to all UMTA programs, the Department does not believe that it would be appropriate to exempt section 9 funds.

In addition to funds authorized to be appropriated under the Act, the proposed rules would apply to all other UMTA programs and projects funds for which are authorized by the Urban Mass Transportation Act of 1964, as amended. For example, programs and capital projects, funds for which are authorized under sections 3 and 5 of the Urban Mass Transportation Act, would be covered, even though these funds were not authorized by the Surface Transportation Assistance Act of 1982.

The purpose of this extension of section 105(f) goals to UMTA programs beyond those funded by the Surface Transportation Assistance Act of 1982 is to apply one set of administrative requirements uniformly to all UMTA programs funded by the Act or the Urban Mass Transportation Act. This is particularly important because, in many instances, funds from different UMTA sources are comingled in projects of a given recipient. Using the same administrative system to administer MBE requirements for all UMTA programs should minimize confusion and administrative burdens for recipients. Also, since most UMTA recipients have consistently met or exceeded ten percent goals under the existing 49 CFR Part 23, the Department does not believe that this proposal (particularly given the waiver provision of § 23.65) will create hardship for recipients.

The Department does not propose, at this time, to continue the coverage of UMTA programs not authorized by the

Act beyond the time when funds authorized by the Act are exhausted. This is for two reasons. First, affirmative action remedies of the kind specified by section 105(f) are properly limited in duration. Second, the Department believes that it is desirable that all UMTA programs be administered under the same MBE requirements, both now and after the section 105(f) requirements are no longer in effect.

The Department's authority to extend the section 105(f) procedures to UMTA programs not funded by the Surface Transportation Assistance Act of 1982 derives from section 19 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1615). Section 19 provides, in relevant part, that:

> (a)(1) No person in the United States shall on the grounds of race, color, creed, national origin, sex, or age be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through financial assistance under this chapter. The provisions of this section shall apply to employment *and business opportunities* and shall be considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.
>
> (2) The Secretary *shall take affirmative action* to ensure compliance with subsection (a)(1) of this section. (Emphasis added.)

The Department proposes to interpret the Secretary's authority to take affirmative action with respect to business opportunities to permit the use of Subpart D procedures in all UMTA programs.

It should be pointed out that under this applicability provision, the base for the calculation of overall goals under § 23.64(a) would include only Federal funds, not the recipient's matching share. This approach appears to be consistent with the language of section 105(f), which requires ten percent participation in funds authorized to be appropriated by the Act (which are Federal funds, not state or local funds).

The second criterion is that, to be included in the base from which overall goals are calculated, the funds must be apportioned or allocated to recipients. Some funds authorized by the Act, while they come within the literal language of section 105(f), never actually flow to recipients (e.g., because of Federal obligation ceilings or the unavailability of state or local matching funds). It would not be reasonble to require recipients to establish goals for such funds.

The third criterion is that the funds must actually participate in contracts. Some FHWA and UMTA funds flow to recipients for purposes that do not result in contracting opportunities. Again, the Department proposes not to require recipients to meet MBE goals for funds that could not be expended with MBEs. For example, FHWA recipients pay compensation to owners of property acquired for highway right-of-way. The amount of this compensation would not count toward the base from which overall goals are calculated, although expenditures to private parties connected with the property transaction (e.g., fees to lawyers involved in negotiations for acquiring the property) would count.

It should be emphasized that all types of contracting are intended to be included in the base from which overall goals are calculated. This subpart applies not only to construction contracts but also to contracts for the services of engineers, architects and other professionals (e.g., lawyers retained for condemnation cases, management consultants for recipients' organizations), contracts for support services (e.g., research, data processing, security, janitorial), and any other kind of contract in which funds covered by the proposed subpart participate.

The second and third criteria are proposed under the discretion granted by the first clause of section 105(f) ("Except to the extent that the Secretary determines otherwise * * *"). To establish these criteria, the Secretary proposes to determine that, of the funds authorized to be appropriated by the Surface Transportation Assistance Act of 1982, only those funds apportioned or allocated to recipients which they use for contracting purposes would constitute the base from which overall goals under this subpart are calculated.

Section 23.63 Definitions.

Section 105(f) requires the expenditure of ten percent of the funds authorized under the Act with "small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by section 8(d) of the Small Business Act * * * and relevant subcontracting regulations promulgated pursuant thereto." To comply with this requirement, the Department is proposing definitions, applicable only to this subpart, which are consistent with those of section 8(d) and its implementing regulations (e.g., 45 FR 31028, May 9, 1980).

The reference to section 8(d) and these subcontracting regulations, in the Department's view, concerns only the definition of socially and economically disadvantaged individuals. This is apparent from the wording of section 105(f). In addition, it would be inappropriate and administratively cumbersome to attempt to apply to recipients of DOT financial assistance and their contractors the administrative scheme (which includes, for example, detailed subcontracting plans for prime contractors in some contracts) of section 8(d), which is closely tied to Federal agency procurement practices.

The definitions derived from section 8(d) are similar, but not identical, to the definitions in § 23.5 of the Department's MBE regulation. Recipients would use the definitions proposed in this section in determining the eligibility of firms to participate in contracts covered by this subpart, but would continue to use the definitions of § 23.5 for other contracts. This means that, in a few cases, a firm eligible to participate as an MBE firm in Federal Aviation Administration or Federal Railroad Administration contracts might not be eligible to participate in FHWA or UMTA contracts under this subpart. The Department realizes that this dual set of definitions could cause confusion, and that having different definitions is not desirable on a long-term basis. For this reason, the Department intends, in future rulemaking on this subject, to propose a single set of definitions that would be used for all purposes.

Since 49 CFR Part 23 consistently uses the terms "minority" and "minority business enterprise," these terms would be retained in this subpart. However, "minority" would be defined in this subpart by a cross-reference to the definition of "socially and economically disadvantaged individuals." "Minority business enterprise" or "MBE" would be defined in the same way that section 8(d) of the Small Business Act and its implementing rules define "small business concern owned and controlled by socially and economically disadvantaged individuals." This definition of MBE is essentially the same as the definition of § 23.5, except for the reference to socially and economically disadvantaged individuals.

"Small business concern" is not defined in § 23.5, but the substance of this definition is incorporated in the § 23.5 definition of "MBE." Again, this definition is not intended to cause recipients to change their standards for certifying MBEs. One problem that has caused confusion under the MBE regulation is the question of *which* "relevant regulation" promulgated pursuant to section 3 of the Small Business Act recipients should use in determining whether a firm is a small business concern. The Department seeks comment on whether there are some portions of SBA's firm size standards (13 CFR Part 121) which are particularly

appropriate for use in connection with the DOT MBE program.

The definition of "socially and economically disadvantaged individuals" is somewhat different from the definition of "minority" in § 23.5. First, in order to qualify as a socially and economically disadvantaged individual, a person must be a U.S. citizen. Lawful permanent residents who are not citizens are "minorities" under § 23.5 but not "socially and economically disadvantaged individuals" under this subpart.

Second, persons must actually be socially and economically disadvantaged in order to qualify under this definition. Recipients can presume that members of the enumerated minority groups are socially and economically disadvantaged; however, this presumption is rebuttable. For example, a receipient should not certify as eligible for participation under Subpart D a minority business owned by someone who is demonstrably not economically disadvantaged (e.g., an individual whose business or other activities over a period of years has created substantial wealth, a child of highly successful and affluent parents whom the parents set up in a firm spun off their business). By contrast, under § 23.5, a business owned and controlled by any minority individual, regardless of economic status, is eligible as an MBE.

Third, persons must normally fall into one of the minority groups listed in the definition. There are no important differences between the definitions of "Black Americans" and "Native Americans" in this proposed section and the definitions of "Black" and "American Indian and Alaskan Native" in § 23.5. The definition of "Hispanic Americans" in this section is identical to the definition of "Hispanic" in § 23.5, as amended (46 Fed. Reg. 60458, December 10, 1981). However, persons with origins in Portugal would not be regarded as socially and economically disadvantaged persons, since they are not included in the definition of "Hispanic Americans" and SBA has never added Portuguese-Americans to their list of groups members of which may be presumed to be socially and economically disadvantaged individuals. The definition of "Asian-Pacific Americans" in this NPRM does not include people from some countries (e.g., Burma, Thailand) who could be regarded as having origins in Southeast Asia, and hence eligible under § 23.5.

If the SBA grants 8(a) certification to any business, that business is automatically considered to be eligible to participate as an MBE for purposes of Subpart D, even if the owner of the business does not fall into one of the normal minority categories (e.g., an Appalachian white male, a Hasidic Jew, a white woman). Also, SBA may from time to time add new groups to its roster of groups presumed to be socially and economically disadvantaged. Any groups which SBA lists in this way will become eligible for participation in DOT-assisted contracts under Subpart D. It was in this way, for example, that persons with origins in the countries of the Indian subcontinent (i.e., India, Pakistan, Bangledesh) were included in the definition of Asian-Pacific Americans.

Section 23.64 Overall Goals.

Subsection (a) of this section is the key provision of Subpart D. Paragraph (a)(1) requires recipients of funds to which this subpart applies to set overall goals of not less than ten percent of the aggregate dollar amount of all Federal-aid highway and transit funds, respectively, to be expended in contracts during the forthcoming fiscal year. This means that recipients which receive funds from both UMTA and FHWA would have to set separate goals for their highway and transit programs. The Department solicits comment on ways to minimize administrative inconvenience that could result from such recipients (e.g., state DOTs) having to submit more than one goal to DOT. The requirements of this paragraph may be waived only through the procedures of § 23.65.

The reference to § 23.41 is intended to prevent the imposition of new administrative burdens on recipients who are not required to have an MBE program under the existing regulation (§ 23.41 would be amended to include all UMTA programs funded by the Act). The reference would ensure that a recipient which is not required to have an MBE program under § 23.41 (e.g., an UMTA recipient which receives less than $250,000 in UMTA assistance) would not have to create a program in order to comply with Subpart D. Recipients which are not required to have an MBE program would not have to submit overall goals to the Department under this subpart.

With respect to goals for UMTA transit programs, paragraph (a)(2) would give the UMTA Administrator discretion to permit an UMTA recipient to set an overall goal applicable to a particular grant, project, or group of grants or projects, even if the grants or projects involved are not confined to a given fiscal year. This approach may make more sense than an annual goal in some circumstances.

The Department strongly encourages recipients to exceed ten percent participation whenever it is possible to do so. Subsection (b) points out that, in areas with relatively high minority populations, such as large cities and highly urbanized areas, it is expected that recipients will spend substantially more than ten percent of covered funds with MBEs. The Department will evaluate recipients' performance in this regard when considering the approval of goals and waiver requests.

Subsection (c) emphasizes that goals under this section are submitted to the FHWA or UMTA Administrator, as applicable, in the same manner and at the same time as overall goals are submitted under § 23.45(g)(3) for the remainder of recipients' programs under Subpart C of 49 CFR Part 23. In order for the recipient to be in compliance with Subpart D, the Administrator must approve the overall goal submitted under this section.

The Administrator retains full discretion with respect to the approval of overall goals. Even if the recipient has requested approval of an annual overall goal of ten percent or more, the Administrator need not approve it if he or she determines that the recipient can achieve a higher level of MBE participation during the fiscal year. For example, if a certain recipient has had a 15 percent overall goal in recent years and has met or come close to meeting that goal, the Administrator is free to disapprove a requested 11 percent goal and require the recipient's goal to be 15 percent. Under subsection (a), ten percent is a floor for recipient's overall goals, not a ceiling above which recipients may not be required to rise if doing so is reasonably achievable.

The statutory ten percent goal affects funds authorized by the Surface Transportation Assistance Act of 1982 for fiscal year 1983, which has already begun. Obviously, submission of overall goals under this section and requests for waivers under § 23.65 before the beginning of the fiscal year is not possible for this fiscal year. FHWA and UMTA will provide administrative guidance to recipients in the near future concerning the handling of these matters for fiscal year 1983.

Subsection (d) points out that work performed by firms owned and controlled by women, who are not also socially and economically disadvantaged individuals, cannot count toward goals under this subpart. This is because (aside from the few women who have received 8(a) certification from SBA) non-minority women are not defined as socially and economically

disadvantaged individuals by section 8(d) of the Small Business Act and its implementing regulations. At the same time, recipients are required to continue to set separate goals for firms owned and controlled by women under Subpart C of 49 CFR Part 23. Subpart D does not change recipients' programs for such firms at all.

Section 23.65 Waivers.

The Department clearly recognizes that there may be situations in which, despite all a recipient can reasonably be expected to do to meet a ten percent annual overall goal, that goal will be out of reach. For this reason, the Department is proposing to allow the FHWA or UMTA Administrator, as applicable, to waive the ten percent minimum overall goal and to set a lower goal for a given fiscal year.

The Department is given discretion to grant waivers by the "Except to the extent that the Secretary determines otherwise . . ." language of section 105(f). Based on identical language in the 1977 Public Works Act MBE set-aside provision, the Department of Commerce administratively provided for a waiver of this kind. The existence of this waiver was one of the factors cited by the Supreme Court in *Fullilove* v. *Klutznick* in upholding the constitutionality of the statute and the Department of Commerce's implementation of it.

Subsection (a) sets out procedural requirements for waiver requests. The request must be made prior to the beginning of the fiscal year, no later than the time that recipients submit overall goals for approval. As with overall goal submissions, FHWA and UMTA will provide administrative guidance to recipients concerning the timing of waiver requests for fiscal year 1983. Recipients send requests for waivers to the UMTA or FHWA Administrator through the appropriate field offices of UMTA or FHWA. The field offices attach a recommendation to the Administrator concerning the request. The request must include enough information to permit the Administrator to make an informed decision on the request, in accordance with the waiver criteria of subsection (b). A waiver request applies to only one fiscal year. Even if a request is granted for one fiscal year, the recipient must submit a new request for the following fiscal year.

As a general matter, the Department believes it would be useful for recipients to involve the public, including minority contractors, in their decisions concerning goals and waiver requests. Specifically, the Department is considering whether it should require public participation in the important decision of whether a recipient seeks a waiver of its obligation to have a ten percent overall goal.

Clearly, the views of the public, including minority contractors, in a jurisdiction seeking a waiver could shed important light on questions such as the availability of MBEs and the effectiveness of a recipient's efforts to increase MBE participation. This information could assist the recipient in determining where it needed to improve its MBE program and the Department in determining whether a waiver request was meritorious. At the same time, the Department would not want to set up a public participation mechanism that was too burdensome for recipients or that created undue delay in the goal-setting and waiver processes.

The Department would like commenters interested in this issue to consider several questions. Should the Department establish a public participation mechanism for waivers? If so, how would a good mechanism work? If the mechanism involved an opportunity for comment, would it be better to have the comments directed to recipients before a waiver request was sent to the Department, to the Department following the waiver request, or both? Should the Department designate a specific party (e.g., a minority contractors' association, a historically black college or university) to act as the commenter or focal point for minority community comments concerning a given recipient's waiver request? How much weight should the Department give the views of the public generally, and the minority community or minority contractor community in particular, in determining whether to grant a waiver? The Department seeks comments to help answer these questions as well as comments concerning how, if at all, the final rule should treat the matter of minority community participation.

Each Administrator is authorized to waive the minimum ten percent goal only for the programs of his or her own Administration. The Department believes that a joint waiver for both FHWA and UMTA programs would be too complex administratively and would not take into account the differences between the two programs. A recipient of both FHWA and UMTA funds may, but is not required to, submit separate waiver requests. However, the FHWA and UMTA Administrators will consider waiver requests only as they affect the programs of each. FHWA and UMTA would not be required to make the same decision with respect to the waiver request of a given recipient. For example, FHWA could approve a waiver request for the highway programs of a state DOT while UMTA denied a request for the state DOT's UMTA programs. In approving waiver requests for a recipient, UMTA and FHWA could set different adjusted overall goals.

Subsection (b) lists the factors that the FHWA or UMTA Administrator would consider in deciding whether to grant a waiver. Paragraphs (1), (2) and (4) concern the efforts that the recipient makes to improve opportunities for MBEs. In order to make the ten percent goals mandated by section 105(f), it is likely that recipients will have to do more than provide equal opportunities for MBEs. They will have to take affirmative action to improve the participation of MBEs in contracts covered by this subpart. To obtain a waiver, a recipient needs to show that it is taking all the affirmative action it can to locate and utilize MBEs, encourage and help to develop them, and remove legal and other barriers to their participation at a level sufficient to meet a ten percent overall goal.

In connection with paragraph (4), it should be emphasized that recipients are expected to make efforts to surmount barriers that exist pursuant to state or local law. Consequently, difficulties that a recipient has in meeting MBE goals because of existing state statutes or local ordinances (e.g., a state law that does not permit waiving high bonding requirements for MBEs) would be given little, if any, weight in decisions on waiver requests. Of course, controlling decisions of state supreme courts or Federal courts affecting recipients' MBE programs would influence DOT's expectations for recipients' performance.

Paragraph (3) concerns the availability of MBEs to perform work on contracts covered by Subpart D. In determining the availability of MBEs, it will be necessary to consider not only the MBEs actually resident in a recipient's jurisdiction, but also those from other jurisdictions who are available for work on the recipient's contracts. For example, if a predominantly rural state has a large urban area just over the state line, the state would have to include those MBEs from the urban areas who were willing to work on the state's highway projects. State or local legal requirements limiting contracting opportunities to resident companies are not authorized in the Federal-aid highway program (see 23 CFR Part 635, Subpart A) and are not, in

any event, a valid reason for failing to consider firms from other jurisdictions.

In some circumstances, the total number of MBE's available to perform work on the recipients' contracts may not, in itself, give the Administrator an accurate picture of the recipient's ability to meet its overall goal for a given fiscal year. For example, in a given year a state highway agency might spend a significant portion of the funds authorized by the Act on a single large project requiring very specialized contractors (e.g., an underwater tunnel). While the total number of MBE highway construction contractors in the state might be fairly large, the number of MBE contractors qualified to perform the specialty needed for the particular major project might be quite small. In such an exceptional circumstance, the recipient's ability to meet a ten percent overall goal could be reduced. The UMTA and FHWA Administrators would give such unusual circumstances appropriate weight in deciding whether to grant waivers.

As paragraph (5) states, the minority population of the recipient's jurisdiction would be given consideration. However, this is probably the least important of the waiver criteria, and the FHWA and UMTA Administrators would only consider minority population as a very general indicator of the MBE participation potential of an area, in conjunction with the other factors mentioned in subsection (b).

Subsection (c) supplies a bottom line to the waiver provision. Paragraph (1) provides that the FHWA or UMTA Administrator grants a waiver only if he or she determines that the recipient is making all feasible efforts to meet its annual overall goal but will be unable to do so because there are not enough eligible and qualified MBEs available. This determination is left to the Administrator's discretion and judgment. Paragraph (2) provides for coordination of waiver requests with the Department's Office of Small and Disadvantaged Business Utilization (OSADBU). The Director of OSADBU will have the opportunity to review and comment on a waiver request before the Administrator decides whether to grant the request, and will make comments expeditiously in order to avoid delay in processing the request.

Paragraph (3) provides that, if the Administrator grants a waiver, the Administrator would then establish a new overall goal for the fiscal year in question. This adjusted annual overall goal would be less than ten percent. However, the adjusted overall goal is not required to be the goal requested by the recipient. For example, if a recipient requested a waiver to a five percent goal, the Administrator could waive the ten percent goal requirement but decide that seven percent was appropriate. The Administrator could also place any reasonable procedural or substantive condition on the waiver (e.g., take a particular affirmative step, change a procedure, report to the Administrator at a certain date concerning progress in improving MBE participation).

Section 23.66 Compliance.

Subsection (a) is intended to clarify the distinction between the compliance and enforcement provisions of this section—which apply only to this subpart—and Subpart E of 49 CFR Part 23. Subpart E applies to all other matters under the Department's MBE regulation, but does not apply to Subpart D.

Subpart E is based on the model of enforcement procedures under Title VI of the Civil Rights Act of 1964. Nondiscrimination statutes like Title VI. However, Subpart D does not rest on the authority of Title VI. Rather, it is based on section 105(f), a provision of a statute authorizing financial assistance in FHWA and UMTA programs. Compliance with section 105(f), as implemented by the Department's regulations, is a condition of receiving financial assistance from these programs, no different from the many other planning, environmental, etc. conditions placed on receipt of such funds.

Consequently, as subsection (e) of this section provides, the FHWA and UMTA Administrators have at their disposal for purposes of Subpart D the same enforcement mechanisms they have with respect to any condition of financial assistance in their respective programs. In the case of FHWA, the Administrator can use 23 CFR 1.36, which provides:

> If the Administrator determines that a State has violated or failed to comply with the Federal laws or the regulations in this part with respect to a project, he may withhold payment to the State of Federal funds on account of such project, withhold approval of further projects in the State, and take such other action that he deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the State to the satisfaction of the Administrator.

Paragraph (e)(1) would specifically delegate to the Administrator the authority to use his powers under 23 CFR § 1.36 to enforce compliance with this subpart.

With respect to recipients of funds administered by UMTA, paragraph (e)(2) permits the UMTA Administrator to use UMTA's normal means for dealing with noncompliance with grant conditions to enforce compliance with Subpart D. These means, which are roughly equivalent to the authority of the FHWA Administrator under 23 CFR 1.36, may include suspension or termination of Federal funds or the refusal to approve projects, grants, or contracts until deficiencies are remedied.

Subsections (b), (c), and (d) set forth the enforcement scheme for the subpart. First, subsection (b) provides that a recipient fails to comply with Subpart D if it does not have an approved annual goal (i.e., it did not submit a goal or it submitted a goal which the Administrator disapproved and failed to resubmit an acceptable goal) or an approved MBE program under 49 CFR Part 23 with which to meet the goal. Noncompliance with subsection (b) automatically places a recipient in jeopardy of enforcement action under subsection (e).

Subsection (c) requires a recipient which has failed to meet its annual overall goal and seeks to avoid remedial or enforcement action under this section to demonstrate to the Administrator why it failed. The recipient must not only explain the reasons why it could not achieve the goal but also why meeting the goal was beyond the recipient's power. Explanations of failure to achieve a goal that rely on matters within the control of the recipient are unlikely to excuse the failure.

If the Administrator determines that the recipient's failure to meet the goal was not supported or adequately justified, subsection (d) directs the Administrator to order the recipient to take appropriate remedial action to make up for the failure. Remedial action could include, for example, particular affirmative action steps to be taken in the future, such as setting aside a portion of the recipient's Federal financial assistance, contracts, or projects for performance by MBEs. This remedial action would be in addition to the recipient's obligation to meet the annual overall goal covering the period during which the remedial action was taking place. Failure to take the remedial action ordered by the Administrator would itself be noncompliance with Subpart D, subjecting the recipient to enforcement action under subsection (e).

The Administrator is not required to wait until the end of a fiscal year to impose remedial steps. If it reasonably appeared to the Administrator that a recipient was not going to be able to meet its goal, and, within a reasonable

time set by the Administrator, the recipient could not satisfactorily explain the impending failure, the Administrator could direct the recipient to begin remedial action at once.

Amendments to 49 CFR 23.41(a)(2)(i) and (a)(3)(ii)

The Department also proposes to make technical amendments to two subparagraphs of the existing MBE regulation. The two provisions spell out which UMTA recipients are required to submit MBE programs. In their present form, these provisions omit mention of the UMTA section 18 program, for which additional funds are authorized under the Act, and do not include the section 9 and 9A programs, which the Act creates. The amendments simply add these three programs to the list of UMTA programs funding from which can trigger the MBE program requirement of 49 CFR Part 23. As amended, the provisions would specify that recipients who receive $250,000 or $500,000, respectively, from any combination of the section 3, 5, 9, 9A, 17 and 18 programs would be subject to one of the MBE program requirements of the rule.

This amendment is important in the context of the proposed Subpart D because the new subpart would implement section 105(f) through existing MBE programs. Recipients who do not have to have MBE programs under § 23.41 would not be required to comply with the goal requirements of Subpart D. Consequently, it is important that the criteria in § 23.41 for determining who must have an MBE program be current.

Administrative Matters

Shortened Comment Period

Under normal circumstances, the Department would provide a comment period longer than the one allowed for this proposed rule. Indeed, under section 12(b) of the Department of Transportation's Regulatory Policies and Procedures, the public is normally provided a 60 day comment period on significant regulations. The Procedures require an explanation of the reasons for a shorter comment period.

In this case, the reason for using a shorter comment period is that section 105(f) became effective on January 6, 1983, and applies to very large sums of money apportioned to the states on the same date. If recipients are to comply with the statute as it applies to current fiscal year funds, it is essential that the regulations setting forth compliance standards and procedures be promulgated very quickly. Given the necessity for making policy and legal determinations concerning implementation of section 105(f), drafting an NPRM, and coordinating the rule within the Department and with OMB under Executive Order 12291, the Department has proceeded to the publication of this NPRM as quickly as possible. Delay in moving from this NPRM to a final rule would make it much more difficult for the recipients to meet their ten percent goals for fiscal year 1983, leading to the possibility of enforcement action against recipients as well as overall failure to meet the objectives of the statute in this fiscal year.

For these same reasons, the Department is considering making the final rule based on this NPRM effective immediately on publication, rather than observing the normal 30 day waiting period between the date of publication and effective date. In the Department's view, the circumstances mentioned above are sufficient to constitute "good cause" for waiving the 30 day period under 5 U.S.C. 553(d).

Because the Department is also concerned with being able to make maximum use of the comments of recipients, contractors, and other interested parties, the Department is considering keeping the docket open for comments for a period of time following the publication of a final rule. Following the close of this extended comment period, the Department would either publish further revisions to the rule or a notice responding to the additional comments.

Executive Order 12291 and DOT Regulatory Policies and Procedures

The Department has determined that this NPRM does not constitute a major rule under the criteria of Executive Order 12291. However, it is a significant rule under the Department's Regulatory Policies and Procedures. It is significant because it affects to major DOT financial assistance programs and is based on a statute that may be controversial. A regulatory evaluation has been prepared and is on file in the rulemaking docket.

Regulatory Flexibility Act

Under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department has determined that this regulation may have a significant economic impact on a substantial number of small entities. Most minority businesses are small entities. This regulation would require a substantial increase in the use of small minority businesses in many parts of the country. While this impact would be a positive one, it comes under the criteria of the Regulatory Flexibility Act. A preliminary regulatory flexibility analysis has been incorporated in the regulatory evaluation placed in the rulemaking docket. Comments are invited on the impact of this proposed rule on small entities.

List of Subjects in 49 CFR Part 23

Minority businesses, Transportation, Highways and roads, Mass transportation.

Issued at Washington, D.C., this 24th day of February, 1983.

Elizabeth Hanford Dole,

Secretary of Transportation.

1. For the reasons set forth in the preamble, the Department of Transportation proposes to amend Part 23 of Title 49, Code of Federal Regulations, by adding thereto a new Subpart D, to read as follows:

PART 23—[AMENDED]

* * * * *

Subpart D—Special Provisions for Recipients of Funds Under the Surface Transportation Assistance Act of 1982

Sec.

23.61 Purpose
23.62 Applicability.
23.63 Definitions.
23.64 Overall Goals.
23.65 Waivers.
23.66 Compliance.

Authority: Section 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424).

§ 23.61 Purpose.

The purpose of this subpart is to implement section 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424), concerning small business concerns owned and controlled by socially and economically disadvantaged individuals.

§ 23.62 Applicability.

This subpart applies to all Federal-aid highway funds authorized to be appropriated by Title I and section 202 of Title II of the Act, and to all urban mass transportation funds authorized to be appropriated by Titles I and III of the Act or by the Urban Mass Transportation Act of 1964, as amended, apportioned or allocated to recipients, which participate in DOT-assisted prime contracts or subcontracts.

§ 23.63 Definitions.

The following definitions apply to this subpart. Where these definitions are inconsistent with the definitions of § 23.5 of this part, these definitions control for purposes of Subpart D. The

definitions of § 23.5 control for all other purposes under this part.

"Act" means the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424).

"Minority"—See definition of "socially and economically disadvantaged individuals."

"Minority business enterprise" or "MBE" means a small business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and, (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States and who are Black Americans, Hispanic Americans, Native Americans, or Asian-Pacific Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. For convenience, these individuals and groups are referred to as "minorities" in this subpart. Recipients may make a rebuttable presumption that individuals in the following groups are socially and economically disadvantaged (the certification appeals mechanism of § 23.55 of this Part shall be available with respect to individuals alleged not to be socially and economically disadvantaged):

(1) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) "Native Americans," which includes persons who are American Indians, Eskimos, Aluets, or Native Hawaiians; and

(4) "Asian-Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, India, Pakistan, Bangladesh, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.

§ 23.64 Overall goals.

(a)(1) Each recipient of Federal-aid highway funds or urban mass transportation funds to which this subpart applies, that is required to establish an MBE program under § 23.41 of this part, shall set an annual overall goal of not less than ten percent of the dollar value of such funds to be used in DOT-assisted prime contracts and subcontracts during each fiscal year, unless the FHWA or UMTA Administrator has specifically granted a waiver under § 23.65 of this subpart.

(2) In appropriate cases, the UMTA Administrator may permit UMTA recipients to express this goal as a percentage of the funds for a particular grant, project, or group of grants or projects.

(b) It is expected that recipients will spend substantially more than ten percent of covered funds with MBEs in areas of relatively high minority concentration, such as large cities and highly urbanized areas.

(c) Each recipient shall submit the goals required by subsection (a) of this section to the concerned Departmental element for approval as provided in § 23.45(g)(3) of this part.

(d) Work performed by firms owned and controlled by women who are not socially and economically disadvantaged individuals shall not be counted toward goals under this subpart. Recipients shall continue to implement programs and goals for businesses owned and controlled by women as provided in Subpart C of this part.

§ 23.65 Waivers.

(a)(1) Any recipient may request the Administrator of the concerned Departmental element to grant a waiver of the ten percent annual overall goal required by § 23.64(a) of this part.

(2) A separate waiver request shall be made for each fiscal year for which the recipient seeks a waiver.

(3) Each waiver request shall be accompanied by sufficient information to permit the Administrator to determine whether a waiver is justified, in accordance with the waiver criteria of subsection (b) of this section.

(4) The recipient shall make its waiver request before the beginning of the fiscal year to which it applies, no later than the time it submits its request for approval of its annual overall goal for that fiscal year.

(5) Recipients shall submit waiver requests to the Administrator of the concerned Departmental element through the cognizant FHWA Division and Regional Offices or the UMTA Regional Office, as applicable. The FHWA Division and Regional Offices or the UMTA Regional Office forward the request to the Administrator, attaching their recommendation concerning whether the request should be granted, denied, or modified.

(b) The Administrator of the concerned Departmental element shall evaluate requests for waivers according to the following criteria:

(1) *Efforts to locate and utilize MBEs.* This includes soliciting the aid of the Minority Business Development Administration, the Small Business Administration, the Department of Transportation's Office of Small and Disadvantaged Business Utilization and other sources for locating MBEs. This also includes the recipient's efforts, through advertisements, publications, or other communications, to make MBEs aware of contracting opportunities. In connection with this criterion, the concerned Departmental element also reviews the growth of the recipient's annual overall MBE goals and accomplishments in the recent past.

(2) *Initiatives to encourage and develop MBEs.* The concerned Departmental element will consider all documented efforts made by the recipient to assist the formation and growth of MBE firms. This includes technical assistance and support services provided to MBEs and solicitation of available sources for assisting MBEs. For recipients of Federal-aid highway funds, this also includes soliciting the aid of the FHWA Supportive Services Program.

(3) *The number of MBEs available for work on contracts covered by this subpart.* An MBE directory or list of MBEs certified by the recipient shall be available for review. In no case shall the number of MBEs deemed available for work on the recipient's contracts be limited by state or local residency requirements or other formal or informal restrictions on the area from which MBEs are selected. In evaluating the availability of MBEs under this paragraph, the Administrator of the concerned Departmental element takes into account unusual circumstances, such as the expenditure of a significant portion of the recipient's funds in a single fiscal year on a large project requiring specialized expertise which available MBEs do not have.

(4) *Efforts made by the state to remove legal or other barriers to the participation of MBEs in the recipient's contracts at a level sufficient to meet the recipient's annual overall goal.* This includes such actions as lowering or waiving bonding requirements for MBEs, setting aside contracts for MBEs,

assisting MBEs in the acquisition of capital and other resources necessary to effective participation, and eliminating or waiving licensing or prequalification requirements for MBEs. Difficulties caused by state or local law are not grounds for a waiver.

(5) *The size of the minority population.* This factor is of limited significance by itself, and will be used in conjunction with other criteria.

(c)(1) The Administrator of the concerned Departmental element approves a waiver request only if he or she determines that the recipient has demonstrated that it is making all feasible efforts to meet its annual overall goals but will be unable to do so because there are not sufficient eligible and qualified MBEs.

(2) Before acting on a waiver request, the Administrator provides the director of the Office of Small and Disadvantaged Business Utilization with an opportunity to review and comment on the waiver request.

(3) If the Administrator grants the waiver, he or she establishes an adjusted annual overall goal that the recipient is required to meet for the fiscal year in question. The Administrator may condition the grant of a waiver on any reasonable future action by the recipient.

§ 23.66 Compliance.

(a) Compliance with the requirements of this subpart is enforced through the provisions of this section, not through the provisions of Subpart E of this part.

(b) Failure of a recipient to have approved annual overall goals, as required by § 23.64(a) of this subpart, or to have an approved MBE program, is noncompliance with this subpart.

(c) If a recipient fails to meet an approved annual overall goal in any fiscal year, it shall demonstrate to the Administrator of the concerned Departmental element why the the goal should not be achieved and why meeting the goal was beyond the recipient's power to control.

(d) If the Administrator determines that the recipient's failure to meet an annual overall goal is not supported or adaquately justified, the Administrator shall direct the recipient to take appropriate remedial action. Failure to take the remedial action directed by the Administrator is noncompliance with this subpart.

(e)(1) In the event of noncompliance with this subpart by a recipient of Federal-aid highway funds, the FHWA Administrator may take any action provided for in 23 CFR 1.36.

(2) In the event of noncompliance with this subpart by a recipient of funds administered by UMTA, the UMTA Administrator may take appropriate enforcement action. Such action may include, pursuant to grant agreements, the suspension or termination of Federal funds or the refusal to approve projects, grants, or contracts until deficiencies are remedied.

§ 23.41 [Amended]

2. The Department also proposes to amend § 23.41(a) of Title 49 of the code of Federal Regulations as follows:

a. By amending § 23.41(a)(2)(i) thereof to read as follows:

(i) Applicants for funds in excess of $250,000, exclusive of transit vehicle purchases, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal-aid urban systems;

b. By amending § 23.41(a)(3)(ii) thereof to read as follows:

(ii) Applicants for funds in excess of $500,000, exclusive of transit vehicle purposes, under sections 3, 5, 9, 9A, 17 and 18 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
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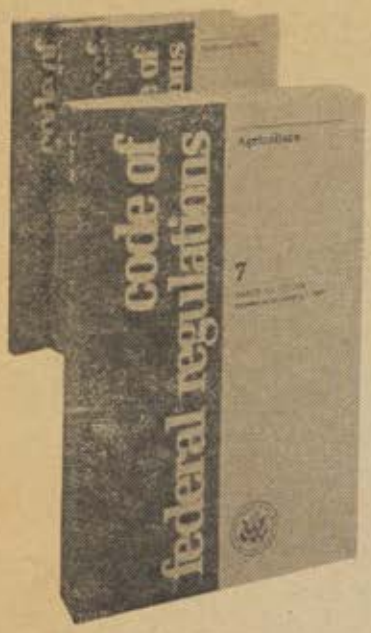
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing February 22, 1983



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