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Thursday
October 13, 1983

Selected Subjects

CONTINUED INSIDE

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Selected Subjects

Contents

Federal Register
Vol. 48, No. 199
Thursday, October 13, 1983

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
51 46487
908 46488
Proposed Rules:
966 46544

10 CFR
2 46489
50 46489
710 46499

12 CFR
7 46502

14 CFR
39 46503
71 46503
95 46504

19 CFR
4 46510
10 46510

21 CFR
558 (2 documents) 46514, 46515
1308 46516
Proposed Rules:
351 46694

23 CFR
Proposed Rules:
658 46545

27 CFR
5 46518
9 (4 documents) 46518–46524
170 46526
240 46526

30 CFR
913 46528
935 46530

33 CFR
100 46531
117 46532
165 (2 documents) 46533, 46534

39 CFR
Proposed Rules:
3001 46545

40 CFR
60 (3 documents) 46535, 46536
61 46535
81 46537
Proposed Rules:
52 46548
81 (3 documents) 46549–46553
1502 46554
1508 46554

41 CFR
Proposed Rules:
101–41 46554

46 CFR
Proposed Rules:
10 46556
157 46556

47 CFR
Proposed Rules:
67 46556

48 CFR
Ch. I 46541

49 CFR
1162 46542
1307 46542
Proposed Rules:
195 46589

50 CFR
611 46542
672 46542
Proposed Rules:
17 46590

Rules and Regulations

Federal Register
Vol. 48, No. 199
Thursday, October 13, 1983

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Fall and Winter Type Squash

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the voluntary U.S. Standards for Grades of Fall and Winter Type Squash to include pumpkin. Currently there are no U.S. standards for pumpkin. Adding pumpkin to the standards will provide industry with official levels of quality. This rule also includes minor changes in wording, procedures and standards format.

The Agricultural Marketing Service has the responsibility, to maintain grade standards in line with current marketing practices.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Philip C. Eastman, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5024.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "non-major" rule. It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies, or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export market.

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, as defined by the Regulatory Flexibility Act, Pub. L. 986-354 (5 U.S.C. 601), because it reflects current marketing practices.

This amendment makes the following changes in the standards:

(1) Adds pumpkin to the standards to provide official levels of quality.

(2) Rewords the definitions for "similar varietal characteristics," "fairly well matured" and "well matured" in the interest of clarity and application of standards to pumpkin.

(3) Provides for determining percentages on the basis of count when squash or pumpkin are fairly uniform in size.

(4) Establishes a constant sample size to maintain uniformity in inspection procedures when in bulk or bulk bins.

Lacking official standards for pumpkin, industry members have frequently indicated an interest in standards for pumpkin similar to those for grades of fall and winter type squash. Pumpkin belong to the same biological family and have similar physical characteristics. Adding pumpkin to the U.S. Standards for Grades of Fall and Winter Type Squash will permit grade certification of official levels of quality.

A proposal to amend the U.S. Standards for Grades of Fall and Winter Type Squash was published in the **Federal Register** on July 11, 1983 (48 FR 31658-31659) with a comment period ending September 9, 1983. Copies of the proposal were widely distributed to interested persons for review and comment. No comments were received.

The U.S. Department of Agriculture has determined that the issuance of these amended standards will benefit industry by providing a means for a more uniform basis for trading.

It is found that it is contrary to public and industry interests to postpone the effective date until 30 days after publication in the **Federal Register** [5 U.S.C. 533] and good cause exists for making this amendment effective upon publication in that:

(1) The harvesting of fall and winter type squash, as well as pumpkin, generally begins the latter part of September.

(2) This rule remains the same as the proposed rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, the Subpart United States Standards for Grades of Fall and Winter Type Squash is revised to read as follows:

Subpart—United States Standards for Grades of Fall and Winter Type Squash and Pumpkin

* * * * *

Subpart—United States Standards for Grades of Fall and Winter Type Squash and Pumpkin[1]

§ 51.4030 General.

These grade standards apply to squash and pumpkin, both of the cucurbit family (Cucurbita pepo, C. moshata, C. maxima, C. mixsta), having a hard shell and mature seeds.

§ 51.4031 Grades.

(a) "U.S. No. 1" consists of squash or pumpkin which meet the following requirements:

(1) Basic requirements:

(i) Similar varietal characteristics;

(ii) Well matured; and,

(iii) Not broken or cracked.

(2) Free from: Soft rot or wet breakdown.

(3) Free from damage by:

(i) Scars;

(ii) Dry rot;

(iii) Freezing;

(iv) Dirt;

(v) Disease;

(vi) Insects; and,

(vii) Mechanical or other means.

(4) Tolerances [See § 51.4033].

(b) "U.S. No. 2" consists of squash or pumpkin which meet the following requirements:

[1] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Fairly well matured; and,
(iii) Not broken or cracked.
(2) Free from: Soft rot or wet breakdown.
(3) Free from serious damage by:
(i) Scars;
(ii) Dry rot;
(iii) Freezing;
(iv) Dirt;
(v) Disease;
(vi) Insects; and,
(vii) Mechanical or other means.
(4) Tolerances (See § 51.4033).

§ 51.4032 Size.

Minimum and/or maximum size of any lot of squash or pumpkin may be specified in connection with the grade in terms of whole pounds and/or fractions thereof.

§ 51.4033 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by weight or by count when fairly uniform in size, are provided as specified:

(a) *Defects.* Ten percent for specimens in any lot which fail to meet the requirements of the specified grade: *Provided,* That included in this amount not more than 2 percent shall be allowed for soft rot or wet breakdown or serious damage by dry rot.

(b) *Size.* Five percent in any lot for specimens which are smaller than a specified minimum weight, and 15 percent which are larger than a specified maximum weight.

§ 51.4034 Application of tolerances.

When packed in containers the entire contents shall be sample or when in bulk or bulk bins, the sample shall consist of approximately 50 pounds or 25 specimens when fairly uniform in size. Samples are subject to the following limitations:

(a) For a tolerance of 10 percent or more, individual samples in any lot may contain not more than one and one-half times the tolerance specified, except that when the individual sample contains 15 specimens or less, individual samples may contain not more than double the tolerance specified: *Provided,* That at least two defective or off-size specimens may be permitted in any individual sample: *And Provided Further,* That the average for the entire lot is within the tolerance specified for the grade.

(b) For a tolerance of less than 10 percent, individual samples in any lot may contain not more than double the tolerance specified: *Provided,* That at least one defective or off-size specimen may be permitted in any individual sample: *And Provided Further,* That the average for the entire lot is within the tolerance specified for the grade.

§ 51.4035 Definitions.

(a) "Similar varietal characteristics" means having the same general characteristics, such as shape, texture and color.

(b) "Well matured" means reaching a stage of development which is indicative of good handling and keeping quality for the variety.

(c) "Fairly well matured" means reaching a stage of development in which the outer skin (shell) is not tender.

(d) "Cracked" means split open, exposing the flesh.

(e) "Damage" means any specific defect described in this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects, which materially detracts from the appearance or edible or marketing quality. The following specific defects shall be considered as damage:

(1) Scars, except stem scars caused by rodents or other means, which are not well healed and corked over, or which cover more than 10 percent of the surface in the aggregate, or which form depressions or pits that materially affect the appearance.

(2) Stem scars which are unhealed on varieties which normally retain their stems after harvesting.

(3) Dry rot which affects an area more than 1 inch (2.5cm) in diameter in the aggregate on a 10 pound (4.5kg) specimen or correspondingly smaller or larger areas depending on the size of the specimen.

(f) "Serious damage" means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which seriously detracts from the appearance or the edible or marketing quality. The following specific defects shall be considered as serious damage:

(1) Scars, except stem scars, caused by rodents or other means which are not well healed or corked over, or which cover more than 25 percent of the surface in the aggregate, or which form depressions or pits that seriously affect the appearance.

(2) Dry rot which affects an area more than 2 inches (5cm) in diameter in the aggregate on a 10 pound (4.5kg) specimen, or correspondingly smaller or larger areas depending on the size of the specimen.

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

Done at Washington, D.C., on October 6, 1983.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 83-27792 Filed 10-12-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 908

[Valencia Orange Regs. 321 and 320,, Amdt. 1]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period October 14–October 20, 1983, and increases the quantity of such oranges that may be so shipped during the period October 7–October 13, 1983. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective October 14, 1983, and the amendment is effective for the period October 7–October 13, 1983.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona Valencia orange crop for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action

is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on February 22, 1983. The committee met again publicly on October 11, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is slightly improved but slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of Valencia oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 908

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

PART 908—[AMENDED]

1. Section 908.621 is added as follows:

§ 908.621 Valencia orange regulation 321.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period October 14, 1983, through October 20, 1983 are established as follows:

(a) District 1: 462,000 cartons;
(b) District 2: 588,000 cartons;
(c) District 3: Unlimited cartons.

2. § 908.620 Valencia Orange Regulation 320 (48 FR 45526), is hereby amended by revising paragraphs (a), (b), and (c) to read:

§ 908.620 Valencia orange regulation 320.

* * * * *

(a) District 1: 550,000 cartons;
(b) District 2: 700,000 cartons;
(c) District 3: Unlimited cartons

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

Dated: October 12, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-28146 Filed 10-12-83; 12:08 pm]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Temporary Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to its "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2 and to its regulations in 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," providing for the issuance of temporary operating licenses for nuclear power reactors. Pub. L. 97–415, enacted on January 4, 1983, amended section 192 of the Atomic Energy Act of 1954 (the Act), to authorize the NRC to issue such licenses. Section 192, initially added to the Act on June 2, 1972, authorized the Atomic Energy Commission (AEC) to issue temporary operating licenses for nuclear power reactors under certain prescribed circumstances. (The AEC's licensing authority was transferred to the NRC in 1975.) The authority under the original section 192 expired, however, on October 30, 1973. To the extent that the amended section 192 is in substance the same as the original section, the implementing regulations in the amendments to Parts 2 and 50 are also similar in substance to the now expired regulations which were initially published in 1972 to implement the section. The amendments to Parts 2 and 50 set out below are designed to conform Commission regulations and procedures to the new temporary operating licensing authority.

EFFECTIVE DATE: November 14, 1983.

ADDRESSES: Copies of comments received on the amendments and of the documents described below may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 Telephone: (301) 492–8690.

SUPPLEMENTARY INFORMATION: The supplementary information below is divided into three sections. The first sets out the background for the rule. The second responds to the comments on the proposed rule. And the third section describes the provisions of the final rule.

I. Background

After the March 1979 accident at the Three Mile Island nuclear power plant, the NRC focused its attention on evaluating the accident and its implications for the safe regulation of nuclear power in this country and on developing the necessary regulatory improvements for continued operation of nuclear power plants. During this period, construction continued on those nuclear power plants with construction permits, although NRC applied only very limited effort to preparing and meeting the necessary safety reviews and hearing requirements for the issuance of operating licenses for these facilities. Largely as a result of this state of affairs, in late 1980 it was argued that there was a possibility that delays would occur between the time when construction of some of these plants would be sufficiently completed to allow fuel loading and the start of operations and the time when all requirements for the issuance of operating licenses (including the hearing requirements of the Atomic Energy Act would be met.

Under the Atomic Energy Act of 1954, as amended (the Act), no person may operate a nuclear power plant without first obtaining an operating license from the NRC. A formal on-the-record evidentiary hearing must be held—and a decision rendered on the basis of that record—if requested by any person whose interest may be affected, before the Commission may issue an operating license. Before the enactment of Public Law 97–415, in a case where a hearing is held, the Commission lacked the authority to authorize fuel loading and low-power operation and testing on the basis of its safety and environmental evaluation; a utility was required instead to await authorization in the course of the hearing process. *See* 10 CFR 50.57(c).

It was argued that, notwithstanding the administrative changes to the licensing process designed to reduce the time required to complete the licensing of these plants, there remains a possibility that some licensing delays might occur for some of the plants scheduled to be completed in the near futures. In order to obviate the

possibility of such delays ever occurring. on March 18, 1981, the Commission submitted a legislative proposal to amend the Act so as to authorize the Commission to issue a temporary operating license for a nuclear power plant, allowing operation and testing, in advance of the conduct or completion of an on-the-record evidentiary hearing on contested issues relating to the final operating license. Public Law 97–415 is the final legislative product of the Commission's proposal. It is an "extraordinary and temporary cure for an extraordinary and temporary situation." Conf. Rep. No. 97–884, 97th Cong., 2d Sess. at 35 (1982).

II. Responses to Public Comments on Proposed Rule

The Commission published a proposed rule in the **Federal Register** on April 18, 1983 for 30-days public comment (48 FR 14926). Thirteen commenters commented on the proposed rule. Six of the 13 commenters generally supported the rule and seven opposed it. The strongest and principal opposition came from commenters that thought that Long Island Lighting Company's Shoreham nuclear power plant is perhaps the sole candidate for a temporary operating license.

The comments and responses can be separated into the categories discussed below (a fuller analysis is provided in the response to comments available in the Public Document Room):

A. Ex Parte and Separation of Functions

One of the most controversial topics was the Commission's position on the application of the *ex parte* rule and separation of functions to the temporary operating licensing process.

As proposed, Subpart C to 10 CFR Part 2, "Procedures Under Section 192 for the Issuance of Temporary Operating Licenses," would simply have added procedural requirements to 10 CFR Part 2 needed to implement the temporary operating licensing authority in section 192 of the Act, as provided for in a new § 50.57(d) of 10 CFR Part 50. Unlike the hearing process on the final operating license, the legislation makes clear that the temporary operating licensing process would not be subject to the hearing requirements of section 189a. of the Act; thus, the process need not be subject to the requirements of Subpart A or to all the requirements of Subpart G of the Rules of Practice in 10 CFR Part 2. As explained in the preamble of the proposed rule, the Commission decided, however, that certain sections of Subpart G would be applied to resolve needless controversy about such items as the filing of papers, service on parties, and so on. These were 10 CFR 2.701, 2.702 and 2.708–2.712, relating to service and filing of documents, maintaining a docket, and time computations and extentions; § 2.713, relating to appearance and practice before the Commission; § 2.758, generally prohibiting challenges to the Commission's rules; and § 2.772, generally granting the Commisson's Secretary the authority to rule on procedural matters.

It was noted in the preamble of the proposed rule that 10 CFR 2.719 and 2.780, relating to separation of functions and *ex parte* communications, would not apply. However, the Commission also noted that it is sensitive to the concern that the informal contacts that would be allowed thereby should not be extensive and that they should not result in significant data or argument that are both relied on by the Commission in its temporary operating licensing decision and unavailable to the parties for comment before the decision. It was thus stated that, if informal contacts do take place which provide significant data or argument and which are both relied on by the Commission and unavailable to the parties, then that data or argument will be made available for comment before the decision. The Commission's decision not to apply separation of functions and *ex parte* rules to temporary operating licensing reflected a preference not to apply rules intended for formal, trial type proceedings, and was based on the belief that operating licensing and temporary operating licensing proceedings on a given plant are separate proceedings for the purpose of application of the formal hearing requirements of the Administrative Procedure Act (APA). It was argued that the amendment to section 192 of the Act states that section 189a. of the Act does not apply to a temporary operating licensing proceeding; thus, if section 189a. does not apply, then the APA's formal hearing requirements do not apply either. It was also noted that the Commission's consideration of informal communications with the parties in an informal temporary operating licensing proceeding would not prevent the Commission from eventually considering, as necessary, issues arising from the formal operating licensing proceeding. And it was stated that information provided in the informal proceeding would not be used in the formal proceeding, unless it is formally included in the record.

In this context, the Commission also noted the Conference Committee's statement that, under section 192, the Commission cannot issue a temporary operating license before "all significant safety issues specific to the facility in question have been resolved to the Commission's satisfaction." *See* Conf. Rep. No. 97–884, 97th Cong., 2d Sess., at 35 (1982).

Two Commissioners disagreed with the Commission's position. Commissioner Asselstine stated in additional views to the **Federal Register** notice:

> I strongly disagree with the Commission majority's decision *not* to apply the provisions of 10 CFR Sections 2.719 and 2.780, relating to separation of functions and *ex parte* communications, as part of the procedural requirements for implementing the temporary operating license authority in Section 192 of the Atomic Energy Act of 1954, as amended.
>
> In all likelihood, the issues that will be raised before the Commission in the temporary operating license proceedings under the provisions of Section 192 will be similar to, or the same as, the issues being adjudicated in the hearing in the final operating license proceedings. By permitting the NRC staff and the applicant, among others, to make informal off-the-record contacts with the Commission on these issues during the temporary operating license proceedings, the Commission majority's proposed rule presents a grave risk of contaminating the formal on-the-record operating license proceeding. I do not believe that this risk of contaminating the final operating license proceeding can be avoided easily if informal, off-the-record contacts on similar issues arising in the temporary license proceedings are permitted. In order to assure procedural fairness in our operating license proceedings, I would apply our regulations relating to separation of functions and *ex parte* communications to temporary operating license proceedings, just as we now do for final operating license proceedings.

Commissioner Gilinsky also stated his separate views in the **Federal Register** notice:

> I have voted against the Temporary Operating License rule because of the Commission's decision to exempt Temporary Operating License proceedings from the *ex parte* and separation of functions rules. "This would mean that the Commission's staff, applicants and intervenors would be free to contact individual Commissioners as well as the Commission's Office of General Counsel and Office of Policy Evaluation to argue their respective position on the temporary operating license." (A sentence of explanation which appeared in the penultimate draft and which the Commission was too modest to leave in the final version.)
>
> This decision is but another example of the Commission's deep-seated hostility toward informing the public and involving it in NRC's proceedings. The decision is incompatible with the basic notions of fairness which underline the *ex parte* rules since the temporary operating license issues will inevitably be quite similar to the issues in the

operating license hearing which will be going on at the same time. As has so often happened, the course chosen by the Commission is likely to be self-defeating: it is bound to result in endless litigation.

Comments. Three commenters supported the Commission's position. They argued that the decision was in accord with the legislation, that it would permit the Commission direct access to its staff, and that it would prevent delays.

Five commenters opposed the Commission's position. They argued, among other things, that it was a violation of due process, citing *Home Box Office*, 567 F. 2d 9 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 809 (1977), and *United States Lines* v. *Federal Maritime Commission*, 584 F. 2d 519 (D.C. Cir. 1978); that the Commission's proposed safeguards to prevent tainting of the process were inadequate; that the operating license proceeding inevitably would be contaminated, since the issues and parties are likely to be identical; that the Commission's justification for suspending the *ex parte* rule was inadequate, being at best a vague preference for avoiding formal rules; that the Commission's assertion that it may permit *ex parte* contacts because the temporary operating license proceeding is not governed by the formal hearing requirements of the APA was unsound and illegal under such cases as *Home Box Office;* and, finally, that, though section 11 of the legislation specifies that a notice and comment format is to be used for temporary operating licenses, precluding argument about such hearing procedures as cross examination, its legislative history emphasizes the need for a "detailed procedural framework" to govern the process; this point, tied to the fact that the legislation expressly subjects the Commission's decision to judicial review, underscores the importance of strict adherence to all prevailing rules of administrative law except those expressly waived by the Act; in turn, this means that the APA's *ex parte* prohibitions should apply.

Response. The Commission has reviewed carefully both sides of the issue. Though it believes that the legislation gives it adequate flexibility to avoid subjecting the temporary operating licensing process to the formal, trial type hearing requirements of section 189a. of the Act, the Commission has decided to modify slightly its position about not applying the *ex parte* rule (§ 2.780) and separation of functions requirements (§ 2.719) to the temporary operating licensing proceeding.

The Commission's position, as set forth in § 2.305 of the final rule, is that, for the purpose of expeditiously acting on the petition for a temporary operating license, it continues to believe that it may need to communicate with its staff. However, oral communications between the Commission's staff and the Commissioners, members of their immediate staffs, or other NRC officials who advise the Commissioners, in the exercise of their quasi-judicial functions, on the merts of any substantive matter at issue in the temporary operating licensing proceeding will be distilled promptly in a fair, written summary, placed in the Commission's Public Document Room, and quickly made available to the parties in the proceedings. A copy of any written communication will also be placed in the Public Document Room and, similarly, quickly made available. These procedures will not apply to communications not prohibited by 10 CFR 2.780, such as status reports and discussions about generic health or safety problems.

Turning to the issue of communications from persons outside the Commission about substantive matters at issue in a temporary operating licensing proceeding, the Commission believes that the comments above as to the need for communications with the staff do not apply with equal force to communications with parties outside the Commission. Thus, the prohibitions of § 2.780 apply in the latter case. Therefore, the Commission will not entertain *ex parte* communications in this context, and persons outside the Commission wishing to communicate with the Commission will be required to use the normal comment procedures outlined in the final rule. If oral or written communications do occur, however, they will be treated using the procedures described in this comment response. The parties will be afforded an additional opportunity to comment to the extent that informal contracts do take place as described above, and such contacts provide significant new data or argument which the Commission proposes to rely upon in making its decision.

B. Emergency Planning

Section 50.57(d)(2) of the proposed rule provided, among other things, that the initial petition for a temporary operating license may be filed after the filing of a State, local or utility emergency prepardness plan for the facility.

Comments. Emergency planning was also a controversial topic. One commenter supported the proposed rule. This commenter first noted that the proposed rule does not directly address emergency planning requirements. Citing Cong. Rec. E 5057 and E 5060–61 (Dec. 10, 1982), the commenter then stated that the proposed rule is consistent with the legislation's history and with existing § 50.47(d).

Three commenters opposed the proposed rule. One commenter argued that the final rule should (1) explicitly state that a full Commission review of on-site and off-site emergency preparedness is a necessary prerequisite for issuance of a temporary operating license, (2) explains how the Commission will conduct its review, and (3) should set forth explicitly that the findings of the Federal Emergency Management Agency (FEMA), called for under § 50.47(a)(2), also must be received and evaluated by the Commission before it considers issuance of the temporary operating license.

Another commenter stated that NRC's existing regulations require the adoption of a local off-site radiological emergency response plan and that, in the absence of such a plan, no operating license could be issued simply on the basis of a utility plan. The commenter argued that, to the extent that the new § 50.57(d) is contrary to that existing regulatory requirement, the tempt to issue a temporary operating license would be directly at odds with the unavoidable fact that no operating license could be issued where no local off-site emergency plan exists. Thus, the "extraordinary remedy" of the temporary operating license would be useless and any attempt to use it would only result in a greater degree of litigation—not the expeditious licensing of a nuclear facility whose future is certain.

A third commenter argued that the proposed rule should specifically require (1) the filing of an off-site plan, (2) a finding that such a plan is implementable, and (3) require the performance of an acceptable exercise before operation above 5 percent power.

Response. The Commission believes that the proposed rule need not be modified. Neither the text of section 192 itself nor the legislative history cited by the commenters prohibits the Commission from applying 10 CFR 50.47(d) to temporary operating licenses for fuel loading and operation under 5 percent power. Further, more is involved in its decision to grant or deny a temporary operating license than, under new § 50.57(d)(2), the simple filing of a State, local, or utility emergency preparedness plan for the facility. Before the Commission can grant such a

license, it must determine, *inter alia*, that "all requirements of law, other than the conduct or completion of any required hearing on the final operating license, are met" and that, "in accordance with such requirements, there is reasonable assurance that temporary operation of the facility, in accordance with the terms and conditions of the license, will provide adequate protection to the public health and safety and the environment." This means that 10 CFR 50.47(d) will apply to temporary operating licenses for fuel loading and operation under 5 percent power, and that § 50.47(a) will apply to temporary operating licenses for operation over 5 percent power. The Commission believes that it is unnecessary to repeat this in the rule itself.

C. Deadline for Requesting a Temporary Operating License

The proposed rule provided in § 2.301 that, because NRC's authority to issue new temporary operating licenses expires on December 31, 1983, an applicant seeking such a license must file its written petition by November 23, 1983.

Comments. Two commenters stated that the proposed filing deadline date is too near the expiration of NRC's authority to allow for publication of the petition in the **Federal Register**, for full response to the petition by interested persons, and for a fair and reasoned decision by NRC based on the information before it. One commenter therefore requested that the Commission change the deadline for filing a petition to October 15, 1983, and a second to October 1, 1983.

Response. The Commission agrees with the commenters that a more reasonable deadline date is needed for the filing of the applications, to include more time for its decision and to make more time available for the necessary procedural steps. The Commission debated whether to include a deadline based on a fixed amount of time before the applicant's need date, thereby guaranteeing adequate time for the necessary staff and Commission reviews. However, because its authority to issue a temporary operating license will expire relatively soon, it decided to set a fixed and certain date. The deadline of November 23, 1983 in § 2.301(a) has been changed to November 14, 1983, thereby allowing more time for the requisite activities and decisions. (*See* discussion below for additional reasons for extending the deadline.) It should be noted that proposed legislation is pending in Congress which would extend the Commission's authority to issue temporary operating licenses to September 30, 1985. (*See* H.R. 98–103, Part 2, at 1 and 17.) If the legislation is enacted, this rule will be changed accordingly.

D. Affidavits and Responsive Affidavits

The proposed rule provided for the filing of a petition by an applicant, accompanied by affidavits, and for responsive affidavits by interested parties. §§ 2.301, 2.302, 2.304, and 50.57(d)(3). Proposed §§ 2.303 and 50.57(d)(4) also provided that any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the **Federal Register.** This language is identical to that found in amended section 192a. of the Act. These provisions proved somewhat contentious and elicited various comments in four areas.

1. Possible NRC Staff Responsive Affidavits

Comment. One commenter noted that the staff is not required to file affidavits and stated that the final rule should specifically state whether or not the staff would file any documents (except the Safety Evaluation Report). The commenter also argued that, if the staff does file responsive affidavits, interested parties—including both the applicant and intervenors—should be permitted to respond to those affidavits.

Response. The Commission has rejected the comment. The staff may or may not wish to file a responsive affidavit under §§ 2.303, 2.304, and 50.57(d). It is not required to file one, though, if it does, it is required, just as any other party, to serve it on the parties to the proceeding.

As a separate matter, the Commission has clarified in §§ 2.303 and 2.304 that "responsive affidavits" can be filed either in support of or in opposition to the petition for a temporary operating license.

2. Thirty-day Response Period

Comments. The same commenter pointed out that the 30-day response period may not allow interested persons a real opportunity in some circumstances to participate in the temporary operating licensing proceeding. The commenter requested that the final rule should provide explicitly that the 30-day period for the filing of responsive affidavits may be extended where justified by factors such as the number or complexity of issues raised by the petition or the length of the affidavits involved.

In this same vein, another commenter requested the Commission either to forbid the applicant from submitting affidavits and other material in support of its application during the 30-day comment period (thereby perhaps flooding the Commission with supporting affidavits on the last day of the comment period and precluding public comment thereon) or to extend the comment period to allow 30 additional days in which post-application submissions by the applicant may be rebutted.

A third commenter believed it a mistake, as a matter of policy, that § 2.711, involving extensions and reductions of time limits, would apply, and requested the Commission to prescribe specifically the time within which a responsive affidavit may be filed, as it has with respect to affidavits in § 2.303.

Response. The three comments are rejected. The regulation simply follows the legislation which specifically provides for the 30-day comment period. The Commission expects an applicant to submit all relevant supporting information with its petition, to allow the Commission and its staff time to review that information and to provide an adequate response time to the public. Aside from the 30-day response period, the Commission would apply § 2.711 to the extent it believes necessary in the circumstances. It wishes to make clear though, and has modified the final rule accordingly, that the last 30-day response period will be initiated only after the applicant has filed its last document which provides substantive data or argument material to the granting of its application. If the applicant files such additional documents after it has filed its petition, these and the petition will be renoticed in the **Federal Register**, for the purpose of initiating a new 30-day period.

3. Responsive Affidavits: Material Facts and Necessary Findings

In describing the contents of affidavits that may be filed in response to a petition for a temporary operating license, proposed § 2.304 provided that such affidavits should state the "material facts as to which it is contended that there exists a substantial issue regarding the issuance of the temporary operating license."

Comments. A commenter requested the Commission to make clear that an opponent of the petition should be required to make a *prima facie* showing that the issues it seeks to raise involve "significant safety issues specific to the facility in question," and, similarly,

requested that the Commission amend proposed § 2.304 to provide that the responsive affidavits be limited to those significant safety issues which have been raised in the final operating licensing proceeding.

Another commenter argued that the affidavits should do no more than repeat the contentions and the evidence at issue in the concurrent Atomic Safety and Licensing Board (ASLB) hearings, stating its belief that the ASLB is the proper forum to resolve the contentions before it in the first instance and that it would defeat the intent of Congress for the Commission to duplicate the ASLB's role.

Response. Both requests are rejected. The Commission believes that the prescribed standard is restrictive enough, considering the informal nature of the hearing. Any higher standard would cast the proceeding in the mold of an adjudicatory, trial type hearing. With respect to the second point raised by the commenter, the Commission expects that most and perhaps all of the responsive affidavits will involve significant safety issues previously raised; nevertheless, it does not wish to preclude anyone from raising new safety issues, if these concern material facts that are relevant to issuance of the temporary operating license and that must be resolved before the Commission can make the requisite three findings in § 50.57(d)(5).

4. Deadline on Commission Action.

On a related matter, proposed § 2.303 provided that the Commission will act "as expeditiously as possible" following the receipt of responsive affidavits to reach a determination on the petition.

Comment. A commenter argued that the Commission impose upon itself deadline of December 31, 1983, for acting on such petitions.

Response. The request is rejected. The Commission has moved the applicant's deadline for submitting its petition to October 15, thereby allowing everyone, including itself, time to take the necessary actions and to make the requisite decisions.

E. Definition of Requirements of Law

Proposed § 50.57(d)(5) set forth the findings that the Commission must make to issue or, subsequently, to amend a temporary operating license. The first required finding is that "in all respects other than the conduct or completion of any required hearing, the requirements of law are met."

Comment. A commenter noted that this provision simply repeats the language or amended section 192b.(i) of the Act. The commenter requested that the final rule make clear that the requirements of law include the Act, other applicable statutory provisions regarding nuclear power, and the NRC's regulations, particularly those in 10 CFR Part 50, promulgated pursuant to those laws.

Response. The request is rejected. The cited provision appears in many places in the Commission's regulations, *e.g.*, § 50.12(a). It is clear that the phrase refers to all applicable statutes and regulations.

F. Public Disclosure

The proposed rule excluding § 2.790 from being applied to a temporary operating licensing proceeding. That section provides, among other things, that NRC documents, in general, will be made available for inspection and copying.

Comment. A commenter argued that the Commission had made no attempt to justify exempting NRC documents concerning temporary operating licenses from disclosure and that the policy reasons behind the requirements of public disclosure embodied in § 2.790 should apply with equal or greater force to a temporary operating licensing proceeding.

Response. The comment is accepted. The Commission sees on valid reason for exempting NRC documents concerning temporary operating licenses from disclosure under the provisions of § 2.790.

G. Availability of Information

Proposed § 2.305(b) excluded NRC's rules regarding discovery from being applied to a temporary operating licensing proceeding. Instead, proposed § 2.302 provided for exchanges of information limited to affidavits, exhibits, and a list of documents relied upon to support the facts stated in the affidavit. The documents themselves would be made available only at a particular location.

Comment. A commenter stated that this list of documents may not provide adequate information to interested parties and requested that the rules should provide an expeditious mechanism by which interested parties can obtain documents, other than those listed by the applicant, which are important to the issues involved.

Response. The request is rejected. The Commission expects the applicant to submit or refer to all the necessary information for it to make an informed decision and for the public to be able to comment reasonably. Thus, all supporting documentation shall be available for inspection. Failure of the applicant do do so will result in denial of its application. (*See* also the response at paragraph D(2) above.) The commenter's request is simply another way of saying that it would like some form of discovery. Though the request appears reasonable, at first glance, the attendant administrative requirements would be too complex and would conflict with the need for expeditious proceedings.

H. Oral Argument

Proposed § 2.308 provided that, ordinarily, informal procedures will be used to resolve particular issues as they arise, i.e., ordinarily formal adjudicatory procedures would not be used.

Comments. A commenter requested that the final rule provid that the Commission will not deny an application for a temporary operating license without first giving the applicant a chance to make an oral presentation to the Commission.

Another commenter requested that the final rule should provide the Commission with discretion to order oral argument, where a major legal issue might be in controversy and the Commission would benefit from hearing parties' views on the matter and where the parties, having filed extensive affidavits, might comment orally on each other's filings.

A third commenter requested that the Commission delete the term "ordinarily" from the final rule, arguing that section 192b. provides that the requirements of section 189a. of the Act "shall not apply to the issuance or amendment of a temporary operating license" and that, therefore, Congress clearly intended that the Commission not use formal adjudicatory procedures in the issuance of temporary operating licenses.

Response. The three requests are rejected. Section 2.308 as proposed contained ample flexibility for the Commission to order oral argument, if it believes that it is necessary to the proper disposition of the proceeding. Moreover, under the legislation the Commission retains authority to choose among the procedures it wishes to apply to a temporary operating licensing proceeding. The term "ordinarily" was added to show that the Commission could use adjudicatory procedures to resolve particular issues.

I. Consideration of Commission Findings in Final Operating Licensing Proceeding

Proposed § 2.306 provided that no party shall argue the issuance or denial of a temporary operating license in support of its position in a proceeding

for the issuance of a final operating license.

Comment. A commenter requested the Commission to clarify this provision to provide that, while the issuance of such a temporary operating license *per se* may not be used by a party in support of its position in a proceeding for the issuance of the final operating license, some Commission rulings contained in the final order authorizing the issuance of a temporary operating license may be used by any party in the final operating licensing proceeding.

Response. The request is rejected. A presiding ASLB in a formal, on-the-record adjudication should not be held to the Commission's findings in a short and expedited informal proceeding in which the issues may not have been fully briefed and argued.

J. Notification to the Commission

Proposed § 2.307 provided that any party to a hearing required pursuant to section 189a. of the Act shall promptly notify the Commission of any information that the terms and conditions of the temporary operating license are not being met or that those terms and conditions are not sufficient.

Comment. A commenter requested that the Commission require that such notice be made by affidavit and that it be accompanied by a statement of the material facts supporting the assertion. The commenter also requested that this provision afford the licensee an opportunity to respond by affidavit to any information provided to Commission pursuant to this provision.

Response. The request is accepted in part. The Commission agrees that a notification under § 2.307 should be accompanied by a statement of material facts and that a holder of a temporary operating license should be able to respond. Section 2.307 has been changed accordingly. The Commission, however, has rejected the request that the notification and response take the form of affidavits, because this requirement would add unnecessary formality.

K. Duration of License

Proposed §§ 2.301 and 50.57(d) (1) and (7) provided, among other things, that the Commission will limit the duration of a temporary operating license or an amendment to a "specified time."

Comment. A commenter stated that the specified time should in all cases be the date a full operating license is issued, arguing that issuance for a duration less that the time of the issuance of a full power operating license would only create a need to amend the license solely for the purpose of extending its duration.

Response. The request is rejected. The Commission agrees with the commenter that it could issue a temporary operating license that would continue in effect until a full power operating license is granted. The proposed section would not have barred the Commission from doing so. However, the rule does provide the Commission with the flexibility to issue the temporary operating license for a shorter time, if particular circumstances indicate that that is desirable or necessary.

III. Final Rule

A. Framework

A person applying for an operating license for a nuclear power plant, which is licensed under sections 103 or 104b. of the Act and as to which a hearing is otherwise required under section 189a. of the Act, could apply for a temporary operating license, pending final action by the Commission on the application for the final operating license. The temporary operating license for the facility would authorize fuel loading, testing and operation at a specific power level to be determined by the Commission. The initial petition would have to be limited to power levels not to exceed 5 percent of the nuclear facililty's rated full thermal power, and the Commission could not initially authorize a higher power level. After the temporary operating license is issued, the licensee may file one or more additional petitions with the Commission to allow facility operation up to full power in staged increases in power level beyond the initial 5 percent limitation. All authorizations for temporary operating licenses under section 192 and these implementing regulations must be pursuant to a vote and a final order of the Commission itself and cannot be delegated to the NRC staff. The authorizations themselves lie within the discretion of the Commission. This means, among other things, that the Commission in a temporary operating license would authorize both a given power level and the time it deems appropriate for operation at that level before issuance of the full power license.

The present authority and procedures in § 50.57(c) of the regulations (under which a presiding ASLB may, on motion, and after a decision based on the evidentiary record or upon agreement of the parties to the contested proceeding, authorize the issuance of a fuel load or low-power and testing license) remain available and are not affected at all by these regulations implementing section 192 of the Act. Thus, temporary operating licensing authority is not coupled to the present § 50.57(c), and a licensee proceeding under § 50.57(c) may also proceed separately under § 50.57(d) without any rights being waived under § 50.57(c). If a licensee already has a low power license and wishes to go to higher or full power using the temporary operating license procedure (that is, it wants to translate its low power authority under § 50.57(c) to low power authority under § 50.57(d) and then to go to higher power under § 50.57(d) for some specified time period), it need simply petition the Commission for an initial temporary operating license. In its petition it should show that it is in satisfactory compliance with § 50.57(d) and that the temporary operating license for low power would be in all respects the same as or more restrictive than the low power license. Although the Commission does not wish to require *pro forma* acts, a licensee in the situation described above should show that the time periods and authorized power level for both types of licenses are compatible. Additionally, if the licensee wishes the Commission to act more quickly and to simplify the Commission's considerations, it may want to show that the parties affected by this situation (ordinarily the parties in the proceeding under § 50.57(c)) have not waived their rights and agree to its proposed course of action; consequently, to make sure that there truly is an agreement and that everyone's rights are being protected, in these circumstances the Commission expects the licensee to demonstrate to it (under the procedures described in § 2.301 *et seq.*, described later) that affected parties were on notice of and have not objected to the licensee's proposed action. The licensee need not make such a showing; however, if it does not wish to or can not make such a showing, though the Commission may still issue the temporary operating license, it may have to use additional procedures to make its decision.

In delineating the circumstances under which petitions may be filed and conditions under which the Commission may exercise its authority, it has carefully followed the prescriptions in section 11 of Pub. L. 97–415. These provisions are reflected in the amendments to Parts 2 and 50. In essence, these amendments would establish a detailed procedural framework for considering and issuing temporary operating licenses. Section 192, as amended, and its accompanying legislative history clearly contemplate that the procedural framework is both useful and needed to govern the

Commission's actions in exercising the new authority and to preserve for the public its right to participate in licensing decisions.

B. Final Subpart C to 10 CFR Part 2—"Procedures Under Section 192 for the Issuance of Temporary Operating Licenses"

Subpart C provides all of the necessary procedural guidance on requests for, and Commission authorization of, temporary operating licenses. Briefly, subpart C provides:

- For the application for a temporary operating license or for an amendment to that license to be filed in the form of a written petition. The written petition with supporting affidavits, must be served on all parties to the proceeding for the issuance of the final operating license.
- The initial petition must be limited to power levels not to exceed 5 percent of rated full thermal power. After the issuance of the temporary operating license, the licensee may file and serve subsequent petitions to amend the temporary operating license by incremental increases in power levels in excess of the initial 5 percent limitation. Each new petition can request only one incremental increase.
- The subpart provides general guidance on the contents and requirements for affidavits which may be filed in support of or in opposition to petitions for the issuance, or the amendment, of temporary operating licenses.
- The Commissioners and their advisors will be able to communicate with the regulatory staff, provided that summaries of such communications, if oral, and copies of such communications, if written, are promptly made available to the parties and the public.
- The final rule provides for prompt publication of notices of petitions for temporary operating licenses as well as for amendments to such licenses and also provides for a 30-day period for public comment for each set of applicant's filings which provides substantive data or argument material to the granting of its application. The notice will inform interested persons about the way they can obtain access to the petition and its supporting affidavits. Such access is needed so that such persons might, as the rules also provide, file and serve responsive affidavits to the petition.
- The final rule does not specify a time after the 30-day public comment period for Commission action on the petition. In keeping with the purpose of the temporary operating license authority, the rule provides that the Commission will act as expeditiously as possible on petitions for temporary operating licenses and for amendments to such licenses.
- Issuance of a temporary operating license or an amendment must be pursuant to a final order of the Commission itself, which recites the reasons called for in section 192 of the Act and in § 50.57(d) of the regulations. As called for by the legislation, the order would be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission would be subject to judicial review under section 189b. of the Act. As discussed before, pursuant to the legislation, the requirements of section 189a. of the Act would not apply to the issuance or amendment of a temporary operating license. Thus, the legislation authorizes the Commission to use procedures other than formal adjudicatory procedures in issuing a temporary operating license. In this regard, the Commission will develop informal procedures case-by-case to resolve particular issues as they arise.
- The final rule restates the procedural constraints in section 192 to assure that the issuance of a temporary operating license does not prejudge the outcome of the licensing hearing for the final operating license for that nuclear power plant or prejudice the rights of any party to the hearing to raise any proper issue in that hearing and to have that issue decided.
- As discussed above, the rule requires, as does section 192, that any party to the final operating license hearing, or any licensing board member conducting the hearing, promptly notify the Commission about any information made available as part of that hearing: (1) That the terms and conditions of the temporary operating license are not being met or (2) that they are insufficient to provide reasonable assurance that operation of the facility during the period of the temporary operating license will provide adequate protection to the public health and safety and to the environment. The notification must be accompanied by a statement of material facts supporting the assertion, and it must be served on all the parties to the proceedings.
- The rule states that a temporary operating license is subject to modification, suspension or revocation, or to the imposition of civil penalties pursuant to sections 186 and 234 of the Act and subpart B of 10 CFR Part 2.
- Finally, the Commission notes that, pursuant to section 192d. of the Act, it will exert its best efforts to adopt appropriate administrative remedies to minimize the need for the issuance of temporary operating licenses. This is in keeping with the conferees' agreement in the Conference Report that a temporary operating license should be a "last resort remedy, to be employed only when no other alternative is available." Conf. Rep. No. 97–884, 97th Cong., 2d Sess. at 36 (1982). The Commission will also ensure that any administrative remedies it adopts will not themselves infringe upon the right of any party to a full and fair hearing under the Act, again in keeping with the conferees' expectations. *Id.* And, lastly, the Commission will notify the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate of all administrative remedies it proposes to adopt, also in keeping with the conferees' intentions. *Id.*

C. Final § 50.57(d) of 10 CFR Part 50

Under the final rule, new § 50.57(d) would be added to reflect the substance of the temporary operating licensing authority granted by Pub. L. 97–415 and the special provisions which must be satisfied before the Commission exercises this authority. Pursuant to section 11 of that law and § 50.57(d), the following requirements would be applicable to a petition for and the issuance of a temporary operating license and amendments to that license:

- A petition for the issuance of a temporary operating license could not be filed with the Commission until the Advisory Committee on Reactor Safeguards (ACRS) report, the NRC staff's initial safety evaluation report (SER) and the staff's supplement to this report (SSER) prepared in response to the ACRS report for the plant, the NRC staff's final environmental statement, and, as discussed above, a State, local or utility emergency plan have been filed.
- The initial petition for a temporary operating license and amendments to that license would be handled as described above.
- After the issuance of a temporary operating license, subsequent petitions from the utility for increased power levels, notice and pubic comment periods on each new petition, and the determinations by the Commission called for by section 192 (and implemented in this new § 50.57(d)) would be required before the Commission could allow operation at

power levels beyond the initial 5 percent low-power testing level.

• Before issuing a temporary operating license or amending the license to allow operation at an increased power level, NRC must provide notice of the request for such authority and a 30-day period for public comment.

• Upon the expiration of the 30-day comment period, the Commission could issue the temporary operating license, or amend the license to allow temporary operation at a power level in excess of the initial license limitation, as the case may be, if the Commission itself determined that: (1) All requirements of law, other than the conduct or completion of any required hearing on the final operating license, are met; (2) in accordance with such requirements, there is reasonable assurance that temporary operation of facility, in accordance with the terms and conditions of the license, will provide adequate protection to the public health and safety and the environment; and (3) denial of the temporary operating license will result in delay between the time when the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the time when a final operating license for the facility would otherwise be issued. For a petition to amend the temporary operating license to permit operation at a power level in excess of 5 percent of the facility's rated full thermal power, the Commission's findings must, of course, be directed to operation at the increased power level which would be authorized by the amendment.

• Any final Commission order authorizing the issuance of a temporary operating license pursuant to section 192 (*i.e.*, as distinguished from an order which may be issued by a presiding ASLB under paragraph (c) of § 50.57) of the Act must recite with specificity the reasons justifying the findings required by that section and § 50.57(d). The order must be sent upon issuance to the Committees described above.

• The temporary operating license would contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

• The Commission would suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license (and on which a hearing under section 189a. is being conducted) with due diligence. The Commission could, of course, suspend the license for other reasons, such as in the interest of public health and safety.

• As discussed above, the Commission also wishes to note that section 192 provides that the Commission's authority to issue new temporary operating licenses will expire on December 31, 1983. Since the Commission cannot issue new temporary operating licenses after December 31, 1983, it expects any licensee that wishes to apply for such a licensee to do so before November 14, 1983, to allow it to act before its authority expires. *See* § 2.301. Licensees should also note that their licenses will not expire on that date; section 192 simply states that the Commission's authority to issue a new temporary operating license will expire on December 31, 1983. It is also clear that the Commission retains its authority to suspend the temporary operating license, if it finds that the applicant is not prosecuting its application for the final operating license with due diligence. *See* § 2.306. Finally, where the Commission has issued a new temporary operating license before December 31, 1983, and, subsequently, the licensee requests an amendment to that license, this provision does not preclude the Commission from amending that license after December 31, 1983.

Paperwork Reduction Act Statement

This rule contains no new or amended requirements for recordkeeping, reporting, plans or procedures, applications or any other type of information collection reviewable by the Office of Management and Budget under the Paperwork Reduction Act.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Since these companies are dominant in their service areas, this final rule does not fall within the purview of the Act.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on these amendments, assessing the costs and benefits and resource impacts. It may be found in SECY-83-16, 16A and 16B, and examined at the address indicated above.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to 10 CFR Parts 2 and 50 are published as a document subject to codification.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Inter-governmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161,181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2238, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300-2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C.

2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. A new subpart C is added to 10 CFR Part 2 to read as follows:

Subpart C—Procedures Under Section 192 for the Issuance of Temporary Operating Licenses

Sec.
2.300 Scope of subpart.
2.301 Filing of petition and accompanying affidavits.
2.302 Contents of affidavits.
2.303 Notice of petition.
2.304 Responsive affidavits.
2.305 Commission authorization.
2.306 Hearing on final operating license.
2.307 Notification to the Commission.
2.308 Use of informal procedures.
2.309 Enforcement.

Subpart C—Procedures Under Section 192 for the Issuance of Temporary Operating Licenses

§ 2.300 Scope of subpart.

This subpart prescribes the procedures for issuing a temporary operating license and specifies the framework for Commission determinations. These procedures apply in any proceeding where an applicant has applied for a final operating license for a utilization facility (licensable under sections 103 of 104b. of the Atomic Energy Act (Act) and otherwise requiring a licensing hearing pursuant to section 189a.) and the applicant, pursuant to section 192 of the Act and § 50.57(d) of this chapter, petitions the Commission for a temporary operating license authorizing fuel loading, testing, and initial low power operation (or for an amendment to a temporary operating license authorizing operation at an increased power level), pending action by the Commission on the application for the final operating license.

§ 2.301 Filing of petition and accompanying affidavits.

(a) Before November 14, 1983, an applicant for an operating license may file a written petition for a temporary operating license with the Commission for each such facility. At the same time that the applicant files with the Commission for its temporary operating license, it must serve the petition, including the accompanying affidavits, on all parties to the proceeding for the issuance of the final operating license. The applicant may file any such petition at any time after the documents called for by section 192 of the Act and § 50.57(d) of this chapter are issued.

(b) The initial petition for a temporary operating license for each such facility shall, in accordance with section 192 of the Act and § 50.57(d) of this chapter, be limited initially to a specified time and to a power level not to exceed 5 percent of the facility's rated full thermal power for that specified time. After the Commission issues a temporary operating license for any such facility, the licensee may file subsequent petitions with the Commission, using the procedure described in paragraph (a), which request the Commission to amend the temporary operating license to allow facility operation at incremental stages beyond the initial 5 percent level for specified times, up to and including operation at full power, pending completion of the proceeding on the final operating license.

(c) The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted; and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

§ 2.302 Contents of affidavits.

The applicant's petition for a temporary operating license or an amendment to that license shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment to that license. Any such affidavit and any affidavit filed in response shall state separately the specific facts and arguments and include the exhibits upon which the person relies. The facts asserted in any affidavit filed shall be sworn to or affirmed by persons having knowledge of those facts, and a statement to this effect shall affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would be available to substantiate orally the facts asserted, as the Commission deems appropriate. Any such affidavit shall be accompanied by a list of documents relied on to support the facts stated in the affidavit and such documents shall be or have been provided to the Commission so that they can be made available for inspection.

§ 2.303 Notice of petition.

(a) The Commission will promptly publish notice of each petition for issuance of a temporary operating license and any subsequent petitions for amendments to that license in the **Federal Register** and is such trade or news publications as the Commission deems appropriate in order to give reasonable notice to persons who might have a potential interest in the grant of such a temporary operating license or an amendment to that license. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file responsive affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the **Federal Register**. The Commission thereafter will act as expeditiously as possible to reach a determination on such petitions.

(b) If, after it has filed its petiton, the applicant files additional documents which provide substantive data or argument material to the issuance of its temporary operating license, these and the petition will be renoticed to initiate a new 30-day period.

§ 2.304 Responsive affidavits.

Responsive affidavits in support of an application for a temporary operating license shall be accompanied by a short and concise statement of the material facts which support the issuance of that license. Responsive affidavits in opposition to the petition shall be accompanied by a short and concise statement of the material facts as to which it is contended that there exists a substantial issue concerning the issuance of the temporary operating license or an amendment to that license. Any responsive affidavit and any accompanying statement shall be served on all parties to the proceeding for the issuance of the final operating license. Any document referenced in support of a responsive affidavit shall be or have been provided to the Commission so that it can be made available for inspection.

§ 2.305 Commission authorization.

(a) Issuance of a temporary operating license or an amendment to that license shall be pursuant to a final order of the Commission itself which recites the reasons for such authorization as called for in section 192 of the Act and § 50.57(d) of this chapter.

(b) The requirements of section 189a. of the Act with respect to the issuance of or an amendment to a utilization facility license shall not apply to the issuance of or an amendment to a temporary operating license. Except as provided in paragraphs (b) (1) and (2) of this section, Subparts A and G of this part, shall not apply.

(1) Sections 2.701, 2.702, 2.708–2.713, 2.758, 2.772, and 2.790 of subpart G of this part shall apply to the consideration of a petition for the issuance of or an

amendment to such a temporary operating license;

(2) That portion of § 2.780 of Subpart G of this part which prohibits communications with persons outside the Commission shall apply. Communications between the Commissioners, their immediate staffs and other NRC officials who advise the Commissioners in the exercise of their quasi-judicial functions, and the regulatory staff, shall be permitted. Copies of any such written communications and summaries of any such oral communications, except communications not prohibited by § 2.780, shall be placed promptly in the public document room and served on the parties to the proceedings.

§ 2.306 Hearing on final operating license.

(a) Issuance of a temporary operating license under section 192 of the Act and § 50.57(d) of this chapter shall not prejudice the right of any party in a proceeding for the issuance of the final operating license to pursue properly admitted issues in a hearing required pursuant to section 189a. of the Act. Failure to assert any ground for denial or limitation of such a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. No party shall argue the issuance or denial of a temporary operating license by the Commission as support for its position in a proceeding for the issuance of the final operating license.

(b) Any hearing on the application for the final operating license for a facility required pursuant to section 189a. of the Act shall be concluded as promptly as practicable. The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. The Commission may suspend the license for other public health and safety or common defense and security reasons.

§ 2.307 Notification to the Commission

(a) Any party to a hearing required pursuant to section 189a. of the Act on the final operating license for a facility for which a temporary operating license has been issued under section 192 of the Act and § 50.57(d) of this chapter, and any member of the Atomic Safety and Licensing Board (ASLB) conducting such a hearing, shall promptly notify the Commission of any information that:

(1) The terms and conditions of the temporary operating license are not being met; or that

(2) Such terms and conditions are not sufficient to provide reasonable assurance that operation of the facility will provide adequate protection to the public health and safety and to the environment during the period of the facility's temporary operation.

(b) The notification shall be accompanied by a statement of material facts supporting the assertion, and it shall be served on all the parties to the proceedings.

(c) The holder of a temporary operating license may respond to the notification. Any response shall be served on all the parties to the proceedings.

§ 2.308 Use of informal procedures.

The Commission ordinarily will not use formal adjudicatory procedures in issuing a temporary operating license and will develop informal procedures case-by-case to resolve particular issues as they arise.

§ 2.309 Enforcement.

The Commission may modify, suspend or revoke a temporary operating license, or impose a civil penalty pursuant to sections 186 and 234 of the Act and Subpart B of this part.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 5070, 50.71, 50.72, 50.73, and 50.78 are issued sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 50.57 of 10 CFR Part 50, a new paragraph (d) is added to read as follows:

§ 50.57 Issuance of operating license.

* * * * *

(d)(1) *Temporary operating license.* An applicant for an operating license, in a case where a hearing is required in a pending proceeding for the final operating license for a facility required to be licensed under sections 103 or 104b. of the Act, pending final action by the Commission on the application for the final operating license, may petition the Commission in writing, pursuant to section 192 of the Act, to § 2.305 of this chapter, and to this paragraph for (i) a temporary operating license for the facility authorizing fuel loading, testing, and operation at up to 5 percent rated full thermal power for a specified time and (ii) an amendment to the temporary operating license requesting for a specified time an incremental increase of the power level beyond that initially granted by the Commission up to full power. The Commission has full discretion to determine the initial power level up to 5 percent and the incremental increases in power levels it will authorize and the period for which the authorization is granted. It will not grant a temporary operating license or an amendment to that license for a period lasting beyond the date the final operating license is granted; and the temporary operating license and any amendments to that license will expire when the final operating license is issued.

(2) The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of:

(i) The report of the Advisory Committee on Reactor Safeguards (ACRS) required by subsection 182b. of the Act;

(ii) The initial safety evaluation report (SER) on the application by the regulatory staff and the staff's first supplement to the SER prepared in response to the ACRS report;

(iii) The staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; and

(iv) A State, local, or utility emergency preparedness plan for the facility.

(3) Each petition for the issuance of a temporary operating license, or for an amendment to that license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompained by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment to that license.

(4) The Commission will publish a notice of each such petition in the **Federal Register** and in such trade or news publications as it deems appropriate to give reasonable notice to any persons who might have a potential interest in the grant of such a temporary operating license or amendment. The notice will inform such persons of the arrangements for their access to the petition and supporting affidavits. Any person may file affidavits in support of, or in opposition to, the petition within 30 days after the publication of such notice in the **Federal Register.**

(5) With respect to any such petition, the Commission may issue a temporary operating license, or subsequently amend the license to authorize temporary operation at a specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that:

(i) In all respects, other than the conduct or completion of any required hearing, the requirements of law are met;

(ii) In accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and to the environment during the period of temporary operation; and

(iii) Denial of the temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license and the date on which a final operating license for such facility would otherwise be issued under the Act.

(6) Any final Commission order authorizing the issuance of any temporary operating license or an amendment to that license pursuant to section 192 of the Act and this paragraph will recite with specificity the reasons justifying the findings required by that section and this paragraph, and will be transmitted upon its issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(7) The temporary operating license will become effective upon its issuance and will contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for its extension.

(8) The Commission will suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence.

(9) The authority to issue new temporary operating licenses under section 192 of the Act and this paragraph expires on December 31, 1983.

Dated at Washington, D.C., this 6th day of October, 1983.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary to the Commission.

Additional Views of Commissioner Gilinsky

The Commission's decision to apply more relaxed *ex parte* and separation of functions rules to the Temporary Operating License proceeding will very likely raise questions about the Commission's motives and result in more fruitless litigation and delay. The *ex parte* and separation of functions rules should apply uniformly to regular and temporary licenses, especially since similar, and possibly identical, issues are involved.

I agree, however, that the present *ex parte* and separation of functions rules are unduly narrow and should be modified to allow the Commission to communicate directly with the NRC staff and non-parties in licensing cases. To accomplish this, we need to: (1) End the NRC staff's role as a full party in our proceedings; and, (2) make some use of the flexibility afforded to initial licensing by the Administrative Procedures Act. These changes would strike a reasonable balance between the requirements of fairness and the Commission's need to have ready access to information.

Additional Views of Commissioner Asselstine

When this rule was issued in proposed form, I disagreed with the Commission majority's decision not to apply the provisions of 10 CFR 2.719 and 2.780, relating to separation of functions and *ex parte* communications, as part of the procedural requirements for implementing the temporary operating license authority in section 192 of the Atomic Energy Act of 1954, as amended. I pointed out at the time that in all likelihood, the issues that will be raised before the Commission in the temporary operating license proceeding under the provision of section 192 will be similar to, or the same as, the issues being adjudicated in the hearing in the final operating license proceeding. I therefore concluded that by permitting the NRC staff, the applicant and other parties in the OL proceeding to make informal, off-the-record contacts with the Commission on these issues during the temporary operating licensing (TOL) proceeding, the proposed rule presented the grave risk of contaminating the formal, on-the-record operating license proceeding. For this reason, I recommended applying the Commission's separation of functions and *ex parte* restrictions to the temporary operating license proceeding as well.

After reviewing the comments received on the proposed rule, a majority of the Commission has now agreed to apply the Commission's separation of functions and *ex parte* restrictions to the applicant and intervenors in the TOL proceeding. However, the majority continues to insist upon preserving the opportunity, during the TOL proceeding, to consult privately with the NRC staff on issues that are being contested in the formal operating license proceeding and on which the staff is advocating a position as a part to that proceeding. Even though a written summary of these private contacts would be made, I believe that this approach with respect to the NRC staff has the real potential to create at least the appearance of unfairness in the Commission's role as ultimate judge on the contested issues in the operating license proceeding. This approach will almost certainly lead to challenges to the validity of some Commission decisions in operating license proceedings, thereby providing a new source of uncertainty and unpredictability in our licensing process.

Moreover, I believe that the majority's approach is not necessary to assure that the NRC staff's advice can be made available to the Commission. Even if the Commission's separation of functions and *ex parte* restrictions were to apply to the TOL proceeding, the Commission would be free to consult informally with the staff on general information, on generic issues and on issues that are not being contested in the OL proceeding. In the case of these contested issues, the Commission would be free to hear the advice of the staff in the TOL proceeding as long as the meeting is public, and other parties are notified in advance, are given an opportunity to attend and are given an opportunity to provide their own comments orally or in writing. In my view, these restrictions still permit the Commission to hear from the staff in a manner that will avoid the appearance of unfairness in the Commission's subsequent decision on the contested issues in the operating license proceeding.

[FR Doc. 83-27860 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

10 CFR Part 710

Defense Programs; Changes in Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending 10 CFR Part 710, entitled, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material" to delegate the authority to suspend DOE access authorization to the Managers of its Field Operations. Under the previous regulation, only the Assistant Secretary for Defense

Programs had the authority to suspend an individual's access authorization in those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization.

DOE is assigning to the Managers of its Field Operations the preparation of notification letters, which enumerate the charges against the individual and explain the individual's rights under DOE access authorization procedures.

DOE is establishing a policy wherein the processing of applications for security clearance or access authorization for individuals who have been convicted of felony crimes and who are currently serving probation or parole may be withheld pending the completion of the probation or parole.

Finally, DOE is imposing time frames for completion of certain actions throughout its administrative review process.

EFFECTIVE DATE: November 14, 1983.

ADDRESSES: Written comments should be directed to the Director, Office of Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545, Attn: Mr. Martin J. Dowd.

FOR FURTHER INFORMATION CONTACT: Mr. Martin J. Dowd, Director, Division of Security, Office of Safeguards and Security, U.S. Department of Energy, Washington, D.C. 20545 (301/353-4642).

Mrs. Elayne Bartner, Office of General Counsel, U.S. Department of Energy, Room 6A-211, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585 (301/252-8618).

SUPPLEMENTARY INFORMATION: The DOE published its proposed rule in the Federal Register on August 3, 1983, 48 FR 35343. Public comments were invited on or before September 2, 1983. Mr. J. M. Harden, President of United Steelworkers of America, AFL-CIO-CLC, Local Union 8031, Rocky Flats, Colorado, submitted an objection to the proposed regulation in general; however, no specific comments or suggestions were offered in his response. In accordance with 501(c)(1) of the DOE Organization Act, 42 U.S.C. 7101(c), DOE has determined that these regulations present no substantial issue of fact or law, and are not likely to have a substantial impact on the nation's economy or large number of individuals or businesses. Accordingly, no public hearing was required.

E.O. 12291 Federal Regulation

The Department has determined, in accordance with Executive Order 12291, that this is a nonsignificant regulation for the following reasons: It has no more than a minimal effect upon the objectives of national energy policy or energy statutes, the economy, competition, the quality of the environment, state and local government programs and existing regulatory programs of DOE or other executive agencies; it will not impose new compliance and reporting burdens nor add to existing requirements; it is not a matter of major concern to the President or Congress, it will not require substantial DOE resources to develop and enforce it; and substantial public comments were not received.

Regulatory Flexibility Act

The Department has also certified that this regulation will not have a significant economic impact on a substantial number of small entities; thus, a small entity flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96-354) is not required.

National Environmental Policy Act of 1969

It is hereby determined that this revision of the regulation does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

Paperwork Reduction Act of 1980

There are no changes in the information collection requirements of the parts of Title 10 as amended. All reporting locations, forms and content are unchanged.

List of Subjects in 10 CFR 710

Classified information, Security measures.

Authorities

Authority.—Sec. 145, 68 Stat. 942, as amended; 42 U.S.C. 2165; sec. 161, 68 Stat. 948, as amended; 42 U.S.C. 2201, E.O. 10450, 3 CFR 1949-1953 comp., p. 398, as amended, 3 CFR, Chap. IV; sec. 204(c), 38 Stat. 1237; 42 U.S.C. 5814; sec. 105(a), 88 Stat. 1238; 42 U.S.C. 5815.

Dated at Washington, D.C., this 3rd day of October, 1983.

Herman E. Roser,

Assistant Secretary for Defense Programs.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

In consideration of the foregoing, Part 710 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below:

1. Section 710.4 is revised to read as follows:

§ 710.4 Policy.

(a) It is the policy of DOE to carry out its responsibility for the security of the energy research and development programs in a manner consistent with traditional American concepts of justice. To this end, the Secretary has established criteria for determining eligibility for access authorization and will afford those individuals described in Section 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) In instances where the individual has been convicted of a felony crime, and is currently serving court ordered probation or parole, the DOE may withhold processing applications for security clearance or access authorization until such time as the individual completes serving the probation parole.

2. Section 710.5 is amended to add a new paragraph (i):

§ 710.5 Definitions.

* * * * *

(i) Throughout this part the use of the male gender shall include the female gender.

3. Section 710.10 is amended by revising paragraph (c) to read as follows:

§ 710.10 Application of the criteria.

* * * * *

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as substantially derogatory and create a question as to the individual's eligibility for access authorization. The Manager of Operations may authorize an interview with the individual, or other investigation as deemed appropriate, and on the basis of such interview and/or investigation, may authorize the granting of access authorization. If the question as to the individual's eligibility is not resolved through interview, additional investigation, or when applicable, through a psychiatric evaluation, the Manager of Operations will forward the individual's case to the Director, Office of Safeguards and Security, DOE. The Director, Office of Safeguards and Security, DOE, may authorize (1) the granting of access

authorization, (2) such other investigation as the Director deems appropriate, or (3) the institution of the procedures set forth in 710.20 et seq. The Director, Office of Safeguards and Security, must authorize one of these options within 30 days from the receipt of the case from the Manager of Operations, unless an extension is made by the Deputy Assistant Secretary for Security Affairs.

* * * * *

4. Section 710.21 is revised to read as follows:

§ 710.21 Suspension of access authorization.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the Manager of Operations shall determine whether the individual's access authorization should be suspended pending the final determination resulting from the operations of the procedures provided in this part. In making the determination, the Manager of Operations shall consider such factors as the seriousness of the derogatory information developed, the possible access of the individual to classified information or significant quantities of special nuclear material, and the individual's opportunity by reason of the individual's position to commit acts adversely affecting the national security. The access authorization of an individual shall not be suspended except by direction of the Manager of Operations. Following the decision to suspend the individual's access authorization, the Manager of Operations shall immediately notify the Assistant Secretary for Defense Programs through the Director, Office of Safeguards and Security. In addition, the Manager, within 10 days of the date of suspension shall submit a request for authority to conduct a hearing to the Director, Office of Safeguards and Security. This request should also contain an explanation of the basis for the suspension.

5. Section 710.22 introductory text is revised to read as follows:

§ 710.22 Notice to individual.

When the Director, Office of Safeguards and Security, has directed the institution of these administrative review procedures with respect to an individual's questioned eligibility for access authorization (as per Section 710.10(c)), the Manager of Operations shall prepare a notification letter, approved by the local Office of Chief Counsel, for delivery to the individual within 30 days of the receipt of such directive from the Office of Safeguards and Security, unless an extension has been authorized by the Director, Office of Safeguards and Security. Where practicable, such letter shall be presented to the individual in person. The letter shall state:

* * * * *

6. Section 710.27 is amended by revising paragraphs (a) and (j) to read as follows:

§ 710.27 Conduct of proceedings.

(a) The proceedings shall be conducted by the Hearing Officer in an orderly, impartial, and decorous manner with every effort made to protect the interest of the government and of the individual in determining the truth of the allegations. Hearings shall commence within 90 days from the date the individual's request for hearing is received. This period can only be extended with the approval of the Director, Office of Safeguards and Security, Headquarters, who will consider the effect of such extension on the interests of both the government and the individual. In performing duties, the Hearing Officer shall always bear in mind and make clear to all concerned that the proceeding is an administrative hearing and not a trial.

* * * * *

(j) The Hearing Officer shall endeavor to obtain all the facts that are reasonably available in order to arrive at recommendations. If, prior to or during the proceedings, in the opinion of the Hearing Officer the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Hearing Officer shall recommend to the Manager of Operations concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of Counsel. If, in the opinion of the Hearing Officer, the circumstances of such amendment may involve undue hardships to the individual because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

* * * * *

7. Section 710.28 is amended by revising paragraph (d) to read as follows:

§ 710.28 Recommendation of the Hearing Officer.

* * * * *

(d) The Hearing Officer's recommendation shall be submitted to the Manager of Operations, accompanied by a statement of the findings and reasons supporting the Hearing Officer's conclusions within 30 days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Safeguards and Security.

8. Section 710.30 is amended by revising paragraph (a) to read as follows:

§ 710.30 Actions on the recommendations.

(a) The signed report of the Hearing Officer containing findings, supporting reasons, conclusions and recommendations, shall be submitted to the Manager of Operations, together with the hearing record, within 30 days of the Hearing Officer's receipt of the hearing transcript or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Safeguards and Security.

* * * * *

9. Section 710.31 is amended by revising paragraph (d) to read as follows:

§ 710.31 Recommendation of the DOE Personnel Security Review Examiners.

* * * * *

(d) After consideration, each Examiner shall individually prepare a report of findings and recommendations and submit the report in writing to the Assistant Secretary for Defense Programs. These findings and recommendations shall be fully supported by stated reasons for their conclusions. Except in those cases where the Personnel Security Review Examiners have requested additional information as provided for in paragraphs (a) or (b) of this section, the Personnel Security Review Examiners shall submit their report of findings and recommendations to the Assistant Secretary for Defense Programs within 45 days of their receipt of each case, unless an extension is granted by the Deputy Assistant Secretary for Security Affairs.

10. A new § 710.39 is added:

§ 710.39 Time frames.

Statements of time established for processing aspects of a case under this part are the agency's desired time frames in implementing the procedures set forth in this part. They shall have no impact upon the final disposition of an access authorization by the Assistant Secretary for Defense Programs, and confer no rights upon an individual

whose eligibility for, or suspension of, access authorization is being considered.

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket 83-44]

Deposits Between Affiliated Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends current Interpretive Ruling 7.7370 concerning deposits between affiliated banks (12 CFR 7.7370). Section 7.7370 states, among other things, that interest-bearing deposits made by a member bank in an affiliated bank are loans or extensions of credit to the affiliate under 12 U.S.C. 371c. The amended ruling provides that deposits made by a member bank in an affiliated domestic or foreign bank in the ordinary course of correspondent business are not considered to be loans or extensions of credit for purposes of 12 U.S.C. 371c. Additionally, deposits made between banks as provided in 12 U.S.C. 371c(d)(1) are not considered to be loans or extensions of credit for purposes of 12 U.S.C. 371c. Changes in 12 U.S.C. 371c resulting from enactment of section 410 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (October 15, 1982), make this amendment necessary. The Comptroller's Office believes that amendment of 12 CFR 7.7370 will harmonize its provisions with revised 12 U.S.C. 371c.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Susan Kay Fetner, National Bank Examiner, Commercial Examinations Division (202) 447-1164 or Larry A. Mallinger, Attorney, Legal Advisory Services Division (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: Section 410 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (October 15, 1982) (Act), significantly amended section 23A of the Federal Reserve Act (12 U.S.C. 371c) relating to member bank transactions with affiliates. Section 23A imposes quantitative limitations and collateralization requirements on "covered transactions" between a member bank and its affiliates. The term "covered transaction" includes, among other things, transactions such as a loan or extension of credit to an affiliate; a purchase of assets, including assets subject to repurchase, from an affiliate; and the issuance of a guarantee, acceptance, or letter of credit, on behalf of an affiliate. *See* 12 U.S.C. 37c(b)(7).

The present version of Interpretive Ruling 7.7370 (12 CFR 7.7370) defines an interest-bearing deposit made by a member bank in an affiliate as a loan or extension of credit for purposes of 12 U.S.C. 371c. However, under 12 U.S.C. 371c(d)(2) an interest-bearing deposit will no longer be considered a loan or extension of credit for 12 U.S.C. 371c purposes if made in an affiliated domestic or foreign bank in the ordinary course of correspondent business. Noninterest bearing deposits made in the ordinary course of correspondent business would also be exempt from treatment as a loan or extension of credit under 12 U.S.C. 371c(d)(2). In the case of noninterest bearing deposits, however, the exemption is merely carried over from the former statute.

It should also be noted that the 12 U.S.C. 371c(d)(2) exemption applies only to deposits made in the ordinary course of correspondent business. Interest bearing or noninterest bearing deposits placed in an affiliate *not* in the ordinary course of correspondent business would still be treated as loans or extensions of credit for purposes of 12 U.S.C. 371c. As such, they would be subject to the aggregate limitations on transactions with affiliates and the collateral requirements imposed on such transactions unless another exemption applies. *See* 12 U.S.C. 371c (b), (c).

If interest bearing or noninterest bearing deposits are not made in the ordinary course of correspondent business, they may still be exempt from 12 US.C. 371c if made between banks as provided in 12 U.S.C. 371c(d)(1) (A)-(C). For example, deposits made between affiliated banks each of which is eighty (80) percent or more owned by the same bank holding company are not considered to be loans or extensions of credit for purposes of 12 U.S.C. 371c. *See* 12 U.S.C. 371c(d)(1)(C).

The Comptroller's Office is amending 12 CFR 7.7370 to reflect the statutory changes discussed above.

Adoption Without Notice and Comment

In light of the technical nature of the revision, the lack of the imposition of any substantive new requirements, and the need to implement the Act, the Office for good cause finds that the procedures prescribed by 5 U.S.C. 553 relating to notice, public hearing and comment, and deferred effective date are unnecessary and would serve no useful purpose.

Regulatory Flexibility Act Analysis

Because the Office has found that notice and public procedure concerning this rulemaking are unnecessary and contrary to the public interest, the provisions of the Regulatory Flexibility Act are not applicable. The Act does not apply when an agency is not required to issue a notice of proposed rulemaking under 5 U.S.C. 553 or any other statute.

Executive Order 12291

The Office has determined that the amendment does not constitute a major rule within the meaning of Executive Order 12291. The amendment will not have an annual effect on the economy of $100 million or more, will not affect costs or prices for consumers, individual industries, government agencies or geographic regions, and will not have an adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 12 CFR Part 7

National banks, Affiliate transactions.

Authority and Issuance

Accordingly, 12 CFR Part 7 is amended as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority citation for Part 7—Interpretive Rulings—reads as follows:

Authority: R.S. 324 *et seq.*, as amended; 12 U.S.C. 1 *et seq.*, unless otherwise noted.

2. Section 7.7370 is revised to read as follows:

§ 7.7370 Deposits between affiliated banks.

A deposit made by a national bank in an affiliate is considered to be a loan or extension of credit to the affiliate under 12 U.S.C. 371c, except for a deposit made in an affiliated domestic or foreign bank in the ordinary course of correspondent business or as otherwise provided in 12 U.S.C. 371c(d)(1). Loans or extensions of credit to an affiliate are required to be secured under 12 U.S.C. 371c. However, 12 U.S.C. 90 and applicable case law restrict the authority of national banks to pledge their assets to secure private deposits. Similar restrictions on securing deposits also apply to many state-chartered

banks. Consequently, a national bank may not make a deposit in an affiliated national bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1). A national bank may not make a deposit in an affiliated State bank unless made in the ordinary course of correspondent business or as provided in 12 U.S.C. 371c(d)(1) or unless the affiliated State bank can legally offer collateral for such deposit in conformance with the requirements of 12 U.S.C. 371c. A national bank may not receive a deposit from an affiliated bank, except in the ordinary course of correspondent business or as provided n 12 U.S.C. 371c(d)(1), because of its legal inability to provide the required collateral.

Dated: September 13, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR doc. 83-27872 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Nos. 80-SO-6-AD and 80-SO-44-AD; Amendment 39-4726]

Airworthiness Directives; Piper Models PA-31, PA-31-325 and PA-31-350 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, rescission.

SUMMARY: Airworthiness Directive (AD) 80-08-05, Amendments 39-3733, 39-3756 and 39-3761, applicable to Piper Model PA-31-350 airplanes, and AD 80-21-07, Amendment 39-3936, applicable to Piper Models PA-31 and PA-31-325 airplanes, were issued to provide an increased margin of safety during normal takeoff. Since issuance, compliance with the ADs, changes in the airplanes Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM) and improved field awareness of the problems addressed by the ADs make the ADs no longer necessary. Therefore, the ADs are being rescinded.

DATE: Effective Date: October 18, 1983.

Compliance: Not required.

ADDRESSES: Piper Service Bulletins No. 684, dated April 14, 1980, and No. 707, dated February 4, 1981, applicable to Piper Model PA-31-350 airplanes, and Service Bulletins No. 697, dated August 11, 1980, and No. 708, dated April 7, 1981, applicable to Piper Models PA-31 and PA-31-325 airplanes, may be obtained from Piper Aircraft Corporation, 820 E. Bald Eagle Street, Lock Haven, Pennsylvania 17745. 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: R. J. Sample, Flight Test Branch, ACE-160A, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337, telephone (404) 763-7446.

SUPPLEMENTARY INFORMATION: AD 80-08-05, Amendments 39-3733 as revised by 39-3756 and 39-3761 applicable to Piper Model PA-31-350 airplanes, and AD 80-21-07, Amendment 39-3936, applicable to Piper Models PA-31 and PA-31-325 airplanes deleted the marking "takeoff range" from the flap position indicator and added POH revisions which contained 0° flap takeoff performance data and replaced the original 15° flap takeoff performance data. Piper Service Bulletins No. 684 and 697 covered this change. The purpose of these actions was to encourage takeoff with 0° flap settings which provide the pilot an increased margin of safety in the event of an engine failure immediately after takeoff.

The FAA recognized, at the time these actions were taken, that a level of safety higher than that provided by the certification basis was being established for the affected airplanes.

The action required by these ADs has now been accomplished on all in-service airplanes. Subsequent to the issuance of this AD, Piper issued FAA-approved Service Bulletins No. 707 and 708 which provided short field takeoff procedures including appropriate warnings and performance data using a flap position other than 0°.

The provisions of these service bulletins were also incorporated in production airplanes.

Accordingly, the purpose of the ADs, i.e., providing an increased margin of safety during takeoff, has been accomplished in all aircraft in production, as well as those serial numbers identified in the ADs by changes to the flap position indicator markings and the POH.

The FAA believes that considering the above facts and the configuration of the affected airplanes that these ADs may be withdrawn without an adverse effect on safety.

Therefore, ADs 80-08-05 and 80-21-07 are being rescinded.

Since this amendment has no effect on airworthiness, cancels existing AD's which are no longer necessary and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and not in 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

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14CFR 39.13) is amended by rescinding ADs 80-08-05, Amendments 39-3733, 39-3756 and 39-3761 and 80-21-07, Amendment 39-3936.

This amendment becomes effective on October 18, 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); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89)).

Note.—The FAA has determined that this action does not have any cost effect and does not adversely affect any person or airplane. Therefore, I certify that this action (1) is not a major rule under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and because no cost effect and few airplanes involved are owned by small entities, it 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 September 23, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-27787 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-ASO-34]

Alteration of Control Zone and Transition Area, Gulfport, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Gulfport, Mississippi, control zone and transition area by revising the geographical coordinates of the airport, realigning and reducing the size of two control zone extensions and revoking four transition area arrival extensions. Revisions to instrument approach procedures permit reducing the size of the control zone extensions and require

a slight realignment of the extensions. The transition area arrival extensions are no longer required due to cancellation of some instrument approach procedures and revisions to other currently existing approach procedures.

DATES: Effective date: 0901 G.m.t., January 19, 1984.

Comments must be received on or before December 1, 1983.

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

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

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves revising the coordinates of the Gulfport-Biloxi Regional Airport, reducing the size of control zone arrival extensions and revoking four transition area arrival extensions, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Gulfport, Mississippi, control zone and transition area so only that airspace required for aeronautical activities is designated as controlled airspace. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone and transition area by reducing the size of control zone arrival extensions and revoking four transition area arrival extensions. The changes are so minor and nonsubstantive I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Gulfport, Mississippi, control zone under § 71.171 and the transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) are further amended, effective 0901 G.m.t., January 19, 1984, as follows:

Gulfport, MS—[Revised]

By deleting the present description of the Gulfport, Mississippi, control zone contained in § 71.171 and substituting the following therefor: "Within a 5-mile radius fo Gulfport-Biloxi Regional Airport (Lat. 30°24'25"N., Long. 89°04'12"W.); within 3.5 miles each side of Gulfport VORTAC 129° and 322° radials, extending from the 5-mile radius zone to 8.5 miles southeast and northwest of the VORTAC; excluding that portion within the Biloxi, MS, control zone. This control zone is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory."

Gulfport, MS—[Revised]

By deleting the present description of the Gulfport, Mississippi, transition area contained in § 71.181 and substituting the following therefor: "That airspace extending upward from 700 feet above the surface within a 9-mile radius of Gulfport-Biloxi Regional Airport (Lat. 30°24'25"N., Long. 89°04'12"W.); within an 8.5-mile radius of Keesler AFB (Lat. 30°24'39"N., 88°55'26"W.); within 4.5 miles each side of Keesler TACAN 041° and 203° radials, extending from the 8.5-mile radius area to 12.5 miles northwest and southwest of the TACAN."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

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

Issued in East Point, Georgia, on September 15, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-27789 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 23795; Amdt. No. 95-313]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATE: September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

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

The reasons and circumstances which create the need for this amendment involved matters of flight safety,

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

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t. September 29, 1983.

(Secs 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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

Issued in Washington, D.C. on October 5, 1983.

Kenneth S. Hunt,

Director of Flight Operations.

BILLING CODE 4910-13-M

REVISIONS TO IFR ALTITUDES & CHANGE OVER POINTS

AMENDMENT 313 EFFECTIVE DATE, SEPTEMBER 29, 1983

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

IS ADDED TO READ

BERLIN, NH VOR/DME	NERNY, ME FIX	*6000
*4300 - MOCA		MAA-17000
BERLIN, NH VOR/DME	SUGAR, ME FIX	6000
		MAA-17000
CUNNINGHAM, KY VORTAC	AIRBE, KY NDB	*3000
*2100 - MOCA		
DRAKE, AR VOR	ROCZY, AR FIX	*4000
*3300 - MOCA		
NERNY, ME FIX	AUGUSTA, ME VORTAC	6000
		MAA-17000
ROCZY, AR FIX	LITTLE ROCK, AR VORTAC	5000
SUGAR, ME FIX	AUGUSTA, ME VORTAC	6000
		MAA-17000

IS AMENDED TO READ IN PART

EATON, MS VORTAC	JACKSON, MS VORTAC	3400
		MAA-17500
SCOTTSBLUFF, NE VORTAC	ABERDEEN, SD VORTAC	26000
		MAA-45000
SIDNEY, NE VORTAC	ABERDEEN, SD VORTAC	FL290
		MAA-FL450

§95.6001 VOR FEDERAL AIRWAY 1

IS AMENDED TO READ IN PART

BASSO, SC FIX	*ROOFS, SC FIX	2000
*3000 - MRA		
ROOFS, SC FIX	CHARLESTON, SC VORTAC	2000

§95.6004 VOR FEDERAL AIRWAY 4

IS AMENDED TO READ IN PART

YAKIMA, WA VORTAC	AMPLE, WA FIX	5000
MALAD CITY, ID VORTAC	GADPS, WY FIX	#*14000
*11500 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		

§95.6007 VOR FEDERAL AIRWAY 7

IS AMENDED TO READ IN PART

GRAHAM, TN VORTAC	VALER, TN FIX	*3000
*2400 - MOCA		
VALER, TN FIX	CENTRAL CITY, KY VORTAC	*3000
*2200 - MOCA		

§95.6008 VOR FEDERAL AIRWAY 8

IS AMENDED TO DELETE

AKRON, CO VORTAC	HOLYO, CO FIX	
VIA N ALTER	VIA N ALTER	6400
HOLYO, CO FIX	HAYES CENTER, NE VORTAC	
VIA N ALTER	VIA N ALTER	*6000
*4800 - MOCA		

§95.6008 VOR FEDERAL AIRWAY 8—Continued

AKRON, CO VORTAC	PASSE, NE FIX	
VIA S ALTER	VIA S ALTER	*6500
**5700 - MOCA		
PASSE, NE FIX	HAYES CENTER, NE VORTAC	
VIA S ALTER	VIA S ALTER	*7000
*5600 - MOCA		
HAYES CENTER, NE VORTAC	RAGAR, NE FIX	
VIA N ALTER	VIA N ALTER	*5000
*4300 - MOCA		
RAGAR, NE FIX	GRAND ISLAND, NE VORTAC	
VIA N ALTER	VIA N ALTER	*5000
*3600 - MOCA		
HAYES CENTER, NE VORTAC	GRAND ISLAND, NE VORTAC	
VIA S ALTER	VIA S ALTER	*6000
*4400 - MOCA		

§95.6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

HARRISBURG, PA VORTAC	BOYER, PA FIX	3000
BOYER, PA FIX	EAST TEXAS, PA VORTAC	*3000
*2000 - MOCA		

§95.6013 VOR FEDERAL AIRWAY 13

IS AMENDED TO DELETE

GRANTSBURG, WI VOR	DULUTH, MN VORTAC	
VIA E ALTER	VIA E ALTER	3300

§95.6015 VOR FEDERAL AIRWAY 15

IS AMENDED TO READ IN PART

BISMARCK, ND VOR/DME	MINOT, ND VORTAC	4100

§95.6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

DILLI, TX FIX	CAVRN, TX FIX	*10000
*7500 - MOCA		
CAVRN, TX FIX	WINK, TX VORTAC	*10000
*5300 - MOCA		

IS AMENDED TO DELETE

LOS ANGELES, CA VORTAC	HERMO, CA FIX	
VIA S ALTER	VIA S ALTER	2500
HERMO, CA FIX	SEAL BEACH, CA VORTAC	
VIA S ALTER	VIA S ALTER	2500
SEAL BEACH, CA VORTAC	*JOGIT, CA FIX	
VIA S ALTER	VIA S ALTER	**4000
*6000 - MCA JOGIT FIX, E BND		
**2000 - MOCA		
JOGIT, CA FIX	*KAYOH, CA FIX	
VIA S ALTER	VIA S ALTER	6000
*7400 - MCA KAYOH FIX, E BND		

§95.6016 VOR FEDERAL AIRWAY 16—Continued

KAYOH, CA FIX	MARCH, CA VOR	
VIA S ALTER	VIA S ALTER	8000
*MARCH, CA VOR	BANDS, CA FIX	
VIA S ALTER	VIA S ALTER	
	E BND	13000
	W BND	8000
*11200 - MCA MARCH VOR, NE BND		
BANDS, CA FIX	GARNE, CA FIX	
VIA S ALTER	VIA S ALTER	13000
GARNE, CA FIX	PALM SPRINGS, CA VORTAC	
VIA S ALTER	VIA S ALTER	
	W BND	12000
	E BND	8000

§95.6019 VOR FEDERAL AIRWAY 19

IS AMENDED TO READ IN PART

SHELA, MT FIX	LEWISTOWN, MT VORTAC	7700

IS AMENDED TO DELETE

ALBUQUERQUE, NM VORTAC	SANTA FE, NM VORTAC	
VIA W ALTER	VIA W ALTER	9000
CIMARRON, NM VORTAC	FOGLE, NM FIX	
VIA E ALTER	VIA E ALTER	*11600
*10800 - MOCA		
FOGLE, NM FIX	*EARLS, CO FIX	
VIA E ALTER	VIA E ALTER	11600
*10500 - MCA EARLS FIX, S BND		
EARLS, CO FIX	PUEBLO, CO VORTAC	
VIA E ALTER	VIA E ALTER	8200

§95.6026 VOR FEDERAL AIRWAY 26

IS AMENDED BY ADDING

GUNNISON, CO VORTAC	MONTROSE, CO VOR	12400
MONTROSE, CO VOR	GRAND JUNCTION, CO VORTAC	10500

IS AMENDED TO READ IN PART

RULER, SD FIX	*RAPID CITY, SD VORTAC	
	E BND	9000
	W BND	13000
*6500 - MCA RAPID CITY VORTAC, W BND		

IS AMENDED TO DELETE

PHILIP, SD VORTAC	PIERRE, SD VORTAC	
VIA N ALTER	VIA N ALTER	4000

§95.6027 VOR FEDERAL AIRWAY 27

IS AMENDED TO READ IN PART

FREES, CA FIX	*GETER, CA FIX	**6000
*7000 - MRA		
*12000 - MCA GETER FIX, N BND		
**4500 - MOCA		

§95.6043 VOR FEDERAL AIRWAY 43

IS AMENDED TO READ IN PART

YOUNGSTOWN, OH VORTAC	LINES, PA FIX	3000
LINES, PA FIX	ERIE, PA VORTAC	*3000
*2500 - MOCA		
BROTO, NY FIX	U.S.-CANADIAN BORDER	*3500
*1800 - MOCA		

§95.6058 VOR FEDERAL AIRWAY 58

IS AMENDED TO READ IN PART

LAKE HENRY, PA VORTAC	ELLAN, NY FIX	4000
ELLAN, NY FIX	KINGSTON, NY VORTAC	*4000
*3000 - MOCA		

§95.6060 VOR FEDERAL AIRWAY 60

IS AMENDED BY ADDING

GALLUP, NM VORTAC	*CUBBA, NM FIX	11000
*10000 - MCA CUBBA FIX, W BND		
CUBBA, NM FIX	ALBUQUERQUE, NM VORTAC	9600

IS AMENDED TO READ IN PART

ALBUQUERQUE, NM VORTAC	OTTO, NM VOR	10000

IS AMENDED TO DELETE

ALBUQUERQUE, NM VORTAC	OTTO, NM VOR	
VIA S ALTER	VIA S ALTER	10000

§95.6068 VOR FEDERAL AIRWAY 68

IS AMENDED BY ADDING

FARMINGTON, NM VORTAC	OTINS, NM FIX	9000
OTINS, NM FIX	PEDRA, NM FIX	*13000
*10000 - MOCA		

FROM	TO	MEA
§95.6068 VOR FEDERAL AIRWAY 68—Continued		
PEDRA, NM FIX	ALBUQUERQUE, NM VORTAC	9000
IS AMENDED TO DELETE		
ALBUQUERQUE, NM VORTAC VIA N ALTER.	CORONA, NM VORTAC VIA N ALTER.	10000
ALBUQUERQUE, NM VORTAC VIA S ALTER *9500 - MCA BEKER FIX, SE BND	*BEKER, NM FIX VIA S ALTER.	8000
BEKER, NM FIX VIA S ALTER.	CORONA, NM VORTAC VIA S ALTER	10000
CORONA, NM VORTAC VIA N ALTER.	DUPAL, NM FIX VIA N ALTER.	9000
DUPAL, NM FIX VIA N ALTER.	ROSWELL, NM VORTAC VIA N ALTER. SE BND NW BND	*6000 *9000
*5300 - MOCA		
ROSWELL, NM VORTAC VIA S ALTER. *5400 - MOCA	HOBBS, NM VORTAC VIA S ALTER.	*6000
§95.6083 VOR FEDERAL AIRWAY 83		
IS AMENDED TO DELETE		
ROSWELL, NM VORTAC VIA E ALTER.	DUPAL, NM FIX VIA E ALTER. NW BND SE BND	*9000 *6000
*5300 - MOCA		
DUPAL, NM FIX VIA E ALTER.	CORONA, NM VORTAC VIA E ALTER.	9000
§95.6094 VOR FEDERAL AIRWAY 94		
IS AMENDED TO READ IN PART		
DILLI, TX FIX *7500 - MOCA	CAVERN, TX FIX	*10000
CAVERN, TX FIX *5300 - MOCA	WINK, TX VORTAC	*10000
§95.6101 VOR FEDERAL AIRWAY 101		
IS AMENDED TO READ IN PART		
MEDLA, UT FIX	*SALT LAKE CITY, UT VORTAC	**15000
*11000 - MCA SALT LAKE CITY VORTAC, E BND **14600 - MOCA		
§95.6128 VOR FEDERAL AIRWAY 128		
IS AMENDED BY ADDING		
ROCKFORD, IL VORTAC	HERVY, IL FIX	2700
HERVY, IL FIX *2100 - MOCA	MEDAN, IL FIX	*4000

FROM	TO	MEA
§95.6128 VOR FEDERAL AIRWAY 128—Continued		
MEDAN, IL FIX	PEOTONE, IL VORTAC	2400
§95.6136 VOR FEDERAL AIRWAY 136		
IS AMENDED TO READ IN PART		
RALEIGH-DURHAM, NC VORTAC	LANGO, NC FIX	2700
LANGO, NC FIX	FAYETTEVILLE, NC VOR/DME	2000
§95.6148 VOR FEDERAL AIRWAY 148		
IS AMENDED BY ADDING		
IRONWOOD, MI VORTAC *3000 - MOCA	HOUGHTON, MI VORTAC	*3700
§95.6161 VOR FEDERAL AIRWAY 161		
IS AMENDED TO READ IN PART		
ROCHESTER, MN VOR/DME	FARMINGTON, MN VORTAC	3000
FARMINGTON, MN VORTAC	GOPHER, MN VORTAC	3000
§95.6166 VOR FEDERAL AIRWAY 166		
IS AMENDED TO READ IN PART		
CAPON, WV FIX *3500 - MOCA	MARTINSBURG, WV VORTAC	*5000
§95.6178 VOR FEDERAL AIRWAY 178		
IS AMENDED TO READ IN PART		
TRENT, KY FIX *4700 - MOCA	SLINK, WV FIX	*8000
§95.6187 VOR FEDERAL AIRWAY 187		
IS AMENDED TO DELETE		
ALBUQUERQUE, NM VORTAC VIA E ALTER.	PEDRA, NM FIX VIA E ALTER	9000
PEDRA, NM FIX VIA E ALTER *10000 - MOCA	OTINS, NM FIX VIA E ALTER	*12000
OTINS, NM FIX VIA E ALTER.	FARMINGTON, NM VORTAC VIA E ALTER.	9000
§95.6200 VOR FEDERAL AIRWAY 200		
IS AMENDED TO DELETE		
MEEKER, CO VORTAC VIA N ALTER.	AXIAL, CO FIX VIA N ALTER.	11000

FROM	TO	MEA
§95.6200 VOR FEDERAL AIRWAY 200—Continued		
AXIAL, CO FIX VIA N ALTER.	HAYDEN, CO VOR/DME VIA N ALTER. SW BND NE BND	11000 10000
HAYDEN, CO VOR/DME VIA N ALTER.	HABRO, CO FIX VIA N ALTER.	10000
HABRO, CO FIX VIA N ALTER.	KREMMLING, CO VORTAC VIA N ALTER.	13000
§95.6203 VOR FEDERAL AIRWAY 203		
IS AMENDED TO READ IN PART		
NORWICH, CT VORTAC *3500 - MCA RUSEL FIX, NW BND **2200 - MOCA	*RUSEL, MA FIX.	**3000
§95.6211 VOR FEDERAL AIRWAY 211		
IS AMENDED TO DELETE		
DURANGO, CO VOR/DME VIA W ALTER.	PLATA, CO FIX VIA W ALTER.	10000
PLATA, CO FIX VIA W ALTER.	CORTEZ, CO VOR VIA W ALTER.	10600
§95.6220 VOR FEDERAL AIRWAY 220		
IS AMENDED BY ADDING		
MEEKER, CO VORTAC AXIAL, CO FIX	AXIAL, CO FIX HAYDEN, CO VOR/DME SW BND NE BND	11000 11000 10000
HAYDEN, CO VOR/DME HABRO, CO FIX	HABRO, CO FIX KREMMLING, CO VORTAC	10000 13000
§95.6241 VOR FEDERAL AIRWAY 241		
IS AMENDED TO READ IN PART		
COLUMBUS, GA VORTAC	TIROE, GA FIX	3000
§95.6246 VOR FEDERAL AIRWAY 246		
IS AMENDED BY ADDING		
DUBUQUE, IA VORTAC WAUKON, IA VORTAC *2400 - MOCA	WAUKON, IA VORTAC NODINE, MN VORTAC	3000 *3000
§95.6254 VOR FEDERAL AIRWAY 254		
IS AMENDED TO READ IN PART		
DOUGLAS, WY VORTAC *7500 - MOCA	TOOKE, WY FIX	*10000
TOOKE, WY FIX GILLETTE, WY VOR/DME *8900 - MOCA	GILLETTE, WY VOR/DME MILES CITY, MT VORTAC	7000 *9000

FROM	TO	MEA
§95.6263 VOR FEDERAL AIRWAY 263		
IS AMENDED BY ADDING		
ALBUQUERQUE, NM VORTAC	SANTA FE, NM VORTAC	9000
SANTA FE, NM VORTAC	*LAS VEGAS, NM VORTAC	12500
*10000 - MCA LAS VEGAS VORTAC, E BND *11300 - MCA LAS VEGAS VORTAC, W BND		
LAS VEGAS, NM VORTAC	CIMARRON, NM VORTAC	12000
§95.6264 VOR FEDERAL AIRWAY 264		
IS AMENDED TO DELETE		
LOS ANGELES, CA VORTAC VIA S ALTER. *2500 - MOCA	PRADO, CA FIX VIA S ALTER	*4000
PRADO, CA FIX VIA S ALTER	PARADISE, CA VORTAC VIA S ALTER.	4000
PARADISE, CA VORTAC VIA S ALTER. *12000 - MCA SETER FIX, E BND	*SETER, CA FIX VIA S ALTER	9500
SETER, CA FIX VIA S ALTER	BANDS, CA FIX VIA S ALTER E BND W BND	12000 9000
BANDS, CA FIX VIA S ALTER GARNE, CA FIX VIA S ALTER	GARNE, CA FIX VIA S ALTER *PALM SPRINGS, CA VORTAC VIA S ALTER. W BND E BND	13000 12000 8000
*11600 - MCA PALM SPRINGS VORTAC, W BND *5600 - MCA PALM SPRINGS VORTAC, NE BND		
PALM SPRINGS, CA VORTAC VIA S ALTER.	TWENTY NINE PALMS, CA VORTAC VIA S ALTER.	7600
§95.6291 VOR FEDERAL AIRWAY 291		
IS AMENDED BY ADDING		
HOBBS, NM VORTAC *5400 - MOCA	ROSWELL, NM VORTAC	*6000
ROSWELL, NM VORTAC DUPAL, NM FIX CORONA, NM VORTAC	DUPAL, NM FIX NW BND SE BND CORONA, NM VORTAC ALBUQUERQUE, NM VORTAC	9000 6000 9000 10000
IS AMENDED TO DELETE		
ALBUQUERQUE, NM VORTAC VIA N ALTER *10000 - MCA CUBBA FIX, W BND	*CUBBA, NM FIX VIA N ALTER.	8600
CUBBA, NM FIX VIA N ALTER	GALLUP, NM VORTAC VIA N ALTER.	11000

FROM	TO	MEA

§95.6298 VOR FEDERAL AIRWAY 298
IS AMENDED TO READ IN PART

YAKIMA, WA VORTAC	BENTY, WA FIX	5000
MIC CALL, ID VORTAC	*DUBOIS, ID VORTAC	#**16000
*9800 - MCA DUBOIS VORTAC, W BND		
**14000 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		

§95.6300 VOR FEDERAL AIRWAY 300
IS AMENDED TO READ IN PART

SAULT STE MARIE, MI VORTAC	U.S. CANADIAN BORDER	3000
U.S. CANADIAN BORDER	NAASK, MI FIX	3000
NAASK, MI FIX	U.S. CANADIAN BORDER	*6000
*2500 - MOCA		

§95.6347 VOR FEDERAL AIRWAY 347
IS DELETED

IRONWOOD, MI VORTAC	HOUGHTON, MI VORTAC	*3700
*3000 - MOCA		

§95.6370 VOR FEDERAL AIRWAY 370
IS ADDED TO READ

LOS ANGELES, CA VORTAC	PRADO, CA FIX	4000
PRADO, CA FIX	PARADISE, CA VORTAC	4000
PARADISE, CA VORTAC	*SETER, CA FIX	5500
*12500 - MCA SETER FIX, E BND		
SETER, CA FIX	BANDS, CA FIX	
	E BND	13000
	W BND	9000
BANDS, CA FIX	GARNE, CA FIX	13000
GARNE, CA FIX	*PALM SPRINGS, CA VORTAC	
	W BND	12000
	E BND	8000
*11600 - MCA PALM SPRINGS VORTAC, W BND		
*5600 - MCA PALM SPRINGS VORTAC, NE BND		
PALM SPRINGS, CA VORTAC	TWENTY NINE PALMS, CA VORTAC	7500

§95.6372 VOR FEDERAL AIRWAY 372
IS ADDED TO READ

SEAL BEACH, CA VORTAC	*JOGIT, CA FIX	**4000
*6000 - MCA JOGIT FIX, E BND		
**2000 - MOCA		
JOGIT, CA FIX	*KAYOH, CA FIX	6000
*7400 - MCA KAYOH FIX, E BND		
KAYOH, CA FIX	MARCH, CA VOR	8000
*MARCH, CA VOR	BANDS, CA FIX	
	E BND	13000
	W BND	9000
*11200 - MCA MARCH VOR, NE BND		
BANDS, CA FIX	GARNE, CA FIX	13000
GARNE, CA FIX	PALM SPRINGS, CA VORTAC	
	W BND	12000

FROM	TO	MEA

§95.6372 VOR FEDERAL AIRWAY 372—Continued

	E BND	8000
PALM SPRINGS, CA VORTAC	BLYTHE, CA VORTAC	8000

§95.6389 VOR FEDERAL AIRWAY 389
IS ADDED TO READ

CIMARRON, NM VORTAC	FOGLE, NM FIX	*11600
*10800 - MOCA		
FOGLE, NM FIX	*EARLS, CO FIX	11600
*10500 - MCA EARLS FIX, S BND		
EARLS, CO FIX	PUEBLO, CO VORTAC	8200

§95.6410 VOR FEDERAL AIRWAY 410
IS AMENDED TO DELETE

GOPHER, MN VORTAC	BITLR, WI FIX	3400
BITLR, WI FIX	EAU CLAIRE, WI VORTAC	3000

§95.6413 VOR FEDERAL AIRWAY 413
IS AMENDED BY ADDING

EAU CLAIRE, WI VORTAC	BITLR, WI FIX	3000
BITLR, WI FIX	GOPHER, MN VORTAC	3400

§95.6414 VOR FEDERAL AIRWAY 414
IS DELETED

ALEXANDRIA, MN VORTAC	*EKARC, MN FIX	3000
*8000 - MCA EKARC FIX, SE BND		
EKARC, MN FIX	GOPHER, MN VORTAC	8000

§95.6416 VOR FEDERAL AIRWAY 416
IS DELETED

ALEXANDRIA, MN VORTAC	*DAYLE, MN FIX	3000
*5000 - MCA DAYLE FIX, NW BND		
DAYLE, MN FIX	GOPHER, MN VORTAC	3400

§95.6418 VOR FEDERAL AIRWAY 418
IS DELETED

GOPHER, MN VORTAC	*BITLR, WI FIX	3400
*5500 - MCA BITLR FIX, SE BND		
BITLR, WI FIX	NODINE, MN VORTAC	5500

§95.6437 VOR FEDERAL AIRWAY 437

FROM	TO	MEA

§95.6437 VOR FEDERAL AIRWAY 437—Continued
IS AMENDED TO READ IN PART

SAVANNAH, GA VORTAC	CHARLESTON, SC VORTAC	2000

§95.6448 VOR FEDERAL AIRWAY 448
IS AMENDED TO READ IN PART

YAKIMA, WA VORTAC	RUBEL, WA FIX	6000

§95.6468 VOR FEDERAL AIRWAY 468
IS AMENDED TO READ IN PART

*PORTLAND, OR VORTAC	TROTS, WA FIX	**10000
*4500 - MCA PORTLAND VORTAC, NE BND		
**7100 - MOCA		
*TROTS, WA FIX	SWANY, WA FIX	**11500
*11500 - MCA TROTS FIX, NE BND		
**7100 - MOCA		

§95.6484 VOR FEDERAL AIRWAY 484
IS AMENDED TO DELETE

GRAND JUNCTION, CO VORTAC VIA S ALTER.	MONTROSE, CO VOR VIA S ALTER.	10500

FROM	TO	MEA
MONTROSE, CO VOR VIA S ALTER	GUNNISON, CO VORTAC VIA S ALTER.	12400

§95.6494 VOR FEDERAL AIRWAY 494
IS AMENDED TO READ IN PART

UKIAH, CA VORTAC	*GETER, CA FIX	6000
*7000 - MRA		
*12000 - MCA GETER FIX, N BND		
GETER, CA FIX	SANTA ROSA, CA VOR	
	SE BND	4000
	NW BND	6000

§95.6510 VOR FEDERAL AIRWAY 510
IS AMENDED TO READ IN PART

ALEXANDRIA, MN VORTAC	DAYLE, MN FIX	5000
DAYLE, MN FIX	GOPHER, MN VORTAC	3400

§95.6523 VOR FEDERAL AIRWAY 523
IS AMENDED TO READ IN PART

YOUNGSTOWN, OH VORTAC	LINES, PA FIX	3000
LINES, PA FIX	ERIE, PA VORTAC	*2000
*2500 - MOCA		

FROM	TO	MEA	MAA
§95.7030 JET ROUTE NO. 30			
	IS AMENDED TO DELETE		
FARMINGTON, MN VORTAC	NODINE, MN VORTAC	18000	45000
§95.7113 JET ROUTE NO. 113			
	IS AMENDED TO DELETE		
DUBUQUE, IA VORTAC	GOPHER, MN VORTAC	18000	45000
§95.7120 JET ROUTE NO. 120			
	IS AMENDED TO READ IN PART		
REEVE, AK NDB	BETHEL, AK VORTAC	28000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
V-60			
	IS AMENDED TO DELETE		
ALBUQUERQUE, NM VORTAC	OTTO, NM VOR	23	ALBUQUERQUE
V-104			
	IS AMENDED TO READ IN PART		
MONTPELIER, VT VOR/DME	BERLIN, NH VOR/DME	39	MONTPELIER
V-263			
	IS AMENDED BY ADDING		
SANTA FE, NM VORTAC	LAS VEGAS, NM VORTAC	21	SANTA FE
LAS VEGAS, NM VORTAC	CIMARRON, NM VORTAC	28	LAS VEGAS
V-264			
	IS AMENDED TO DELETE		
LOS ANGELES, CA VORTAC VIA S ALTER.	POMONA, CA VORTAC VIA S ALTER.	25	LOS ANGELES
V-264			
	IS AMENDED TO DELETE		
PARADISE, CA VORTAC VIA S ALTER.	PALM SPRINGS, CA VORTAC VIA S ALTER.	34	PARADISE
V-370			
	IS AMENDED BY ADDING		
LOS ANGELES, CA VORTAC	PARADISE, CA VORTAC	25	LOS ANGELES
PARADISE, CA VORTAC	PALM SPRINGS, CA VORTAC	34	PARADISE
V-428			
	IS AMENDED TO READ IN PART		
BIORKA ISLAND, AK VORTAC	SISTERS ISLAND, AK VORTAC	55	BIORKA ISLAND
V-520			
	IS AMENDED BY ADDING		
LEWISTON, ID VOR/DME	SALMON, ID VOR/DME	90	LEWISTON

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8

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 10

[T.D. 83-214]

Customs Regulations Amendments Relating to the Vessel Documentation Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify the documentation procedure for U.S. vessels engaged in various trades and to define clearly the types of supplies and equipment for vessels which are exempt from the payment of Customs duties and internal revenue taxes. These conforming amendments, which are procedural and technical in nature, are necessary due to changes in the Vessel Documentation Act.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bond Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Pub. L. 96-549, the Vessel Documentation Act, ("the Act") the Coast Guard revised and simplified its regulations contained in Part 67 of Title 46, CFR, relating to vessel documentation. Federal documentation of vessels, a form of national licensing, is required for the operation of certain vessels in certain trades, serves as evidence of vessel nationality, and, with certain exceptions, permits vessels to be subject to preferred mortgages.

One of the responsibilities of Customs in connection with the arrival and entry of vessels is to ensure compliance with the Coast Guard documentation requirements. The new Coast Guard regulations were published as Coast Guard Decision 80-107 in the **Federal Register** on June 24, 1982 (47 FR 27490), to amend 46 CFR Parts 66, 67, 68, and 69. The regulations revise terminology and simplify the requirements controlling vessel documentation, administrative procedures and paperwork without making substantive changes in the underlying requirements. The Act and the revised Coast Guard regulations became effective July 1, 1982.

This document amends Part 4, Customs Regulations (19 CFR Part 4), to clarify the documentation procedure for U.S. vessels engaged in various trades, and § 10.59, Customs Regulations (19 CFR 10.59), to define clearly the types of supplies and equipment for vessels which are exempt from Customs duties and internal revenue taxes. These conforming amendments, which are procedural and technical in nature, are necessary due to changes in the Act which was set forth as T.D. 82-138 on page 19 of the Customs Bulletin of August 11, 1982.

Specifically, several changes to the Customs Regulations are involved. One change in § 4.0(c), under the heading "General definitions", would be to revise the term "documented" from a vessel registered, enrolled and licensed, or licensed by the Coast Guard, to a vessel for which a valid Certificate of Documentation, form CG 1270, ("Certificate") issued by the Coast Guard, is outstanding. Upon a vessel's qualification and its owner's proper application to the appropriate Coast Guard office, a Certificate will be issued by the Coast Guard to certify licensing of that vessel for registry, coastwise trade, Great Lakes trade, the fisheries, or pleasure use.

Coast Guard Decision 80-107 contains information regarding each of these five trades for which a Certificate may be endorsed and the privileges acquired through such endorsements. This information is as follows:

A *registry endorsement* is available to a vessel to be employed in foreign trade; trade with Guam, American Samoa, Wake Island, Midway, or Kingman Reef; and in other employments for which a coastwise license or Great Lakes license or fishery license is not required (46 CFR 67.17-3).

A *coastwise license endorsement* entitles the vessel to employment in the coastwise trade, the fisheries, and in any other employment for which a registry or Great Lakes license is not required (46 CFR 67.17-5).

A *Great Lakes license endorsement* entitles the vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributaries and connecting waters, in trade with Canada, and in any other employment for which a registry, a coastwise license, or a fishery license is not required (46 CFR 67.17-7).

Subject to federal and state laws regulating the fisheries, a *fishery license endorsement* authorizes the vessel to fish within the fishery conservation zone as defined in 16 U.S.C. 1811 and landward of that zone, and to land its catch, wherever caught, in the United States (46 CFR 67.17-9).

A *pleasure license* entitles a vessel to pleasure use only (46 CFR 67.17-11).

Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation. However, a vessel must also be built in the United States to qualify for a coastwise, Great Lakes, or fisheries license.

The Certificate may be simultaneously endorsed for operation under as many licenses as the vessel is qualified for and for which application has been made. However, where a vessel possesses a Certificate bearing 2 or more endorsements, the actual use of the vessel determines the license under which it is operating.

The revised term "documented", and the various "documented" classifications (registry, coastwise trade, Great Lakes trade, the fisheries, and pleasure use) would be inserted in certain other provisions of Part 4, Customs Regulations, and in § 10.59(e), Customs Regulations, to provide clarity and consistency.

Another change would be to revise § 4.80(h), Customs Regulations, to correspond with the amendment to 46 U.S.C. 319, by increasing the civil penalty for an undocumented vessel that arrives at a port without the proper Certificate. As amended by section 126(e)(1) of the Act, an undocumented vessel will be subject to a civil penalty of $500, as opposed to the existing $30 fine, for each port at which it arrives without a proper Certificate. This provision applies to any vessel employed in one of the trades, other than a trade covered by a registry, for which a Certificate is issued under the vessel documentation laws. Further, if this undocumented or improperly documented vessel has on board any foreign merchandise, sea stores excepted, or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

The other changes are minor technical and conforming amendments which provide clarity and consistency. These changes are not substantive, but merely procedural and are necessary to correspond to the new Coast Guard requirements. They are conforming amendments which are being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

List of Subjects

19 CFR Part 4

Customs duties and inspection, imports, cargo vessels, coastal zone, fisheries, fishing vessels, harbors, reporting requirements, vessels, yachts.

19 CFR Part 10

Customs duties and inspection, imports, fisheries.

Regulations Amendments

To conform the Customs Regulations to the Vessel Documentation Act and to changes in the Coast Guard regulations, Part 4, Customs Regulations (19 CFR Part 4), and Part 10, Customs Regulations (19 CFR Part 10), are amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. Section 4.0(c) is revised to read as follows:

§ 4.0 General Definitions.

* * * * *

(c) The term "documented" vessel means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard Office, the Certificate of Documentation may be endorsed for (1) registry (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise license (generally, entitles a vessel to employment in the coastwise trade, the fisheries, and other employments for which another endorsement is not required), (3) Great Lakes license (generally, entitles a vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employment for which another endorsement is not required), (4) fishery license (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the fishery conservation zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (5) pleasure license (entitles a vessel to pleasure use only). Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation except that for a coastwise, Great Lakes, or fisheries license endorsement a vessel must also be built in the United States. Detailed Coast Guard regulations on documentation are set forth in title 46, Code of Federal Regulations, § 67.01–67.45.

* * * * *

§ 4.3 [Amended]

2. Section 4.3 is amended by inserting the words "in accordance with § 4.9" at the end of paragraph (a).

3. Sections 4.7(d) (1) and (2) are revised to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the United States with a registry, coastwise license, or Great Lakes license endorsement, or a vessel not so documented but intended to be employed in the foreign, coastwise, or Great Lakes trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see § 4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade—

at the port of first arrival from a foreign country shall declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred, outside the United States, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466).[18] If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on Customs Form 226.

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The district director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the district director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27–3.

* * * * *

4. Section 4.7(d)(4) is removed.

5. Section 4.9(a) is revised to read as follows:

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place shall be in accordance with section 434, Tariff Act of 1930 (19 U.S.C. 1434).[20] The term "American vessel" means a vessel of the United States (see section 4.0(b)) as well as a vessel entitled to be documented (see section 4.0(c)) except for its size when arriving by sea (if less than 5 net tons and arriving otherwise than by sea, see Part 123 of this chapter). The required oath on entry shall be executed on Customs Form 1300.

* * * * *

6. Section 4.9(c) is revised to read as follows:

§ 4.9 Formal entry.

* * * * *

(c) The master of any foreign vessel shall exhibit the vessel's document to the district director on or before the entry of the vessel. After the net tonnage has been noted, the master may deliver it to the consul of the nation to which such vessel belongs, in which event he shall file with the district director the certificate required by section 435, Tariff Act of 1930 (19 U.S.C. 1435). If not delivered to the consul, the document shall be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document shall not be delivered to the master of the foreign vessel until clearance is granted under section 4.61.[21]

* * * * *

7. The first sentence of § 4.14(a)(1) is revised to read as follows:

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

(a) *Dutiability of foreign repairs and equipment purchases.* (1) *Items subject to duty.* The equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for repairs made, including the cost of labor incurred, outside the United States, upon any vessel documented under the laws of the United States with a registry, coastwise trade license, or Great Lakes license endorsement, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad valorem on the actual cost in the country where the

items are purchased or the repairs are made.* * *

* * * * *

8. Sections 4.14(a)(2) (i)–(iv) are revised to read as follows:

(a) * * *

* * * * *

(2) *Dutiable costs on specific types of vessels*—(i) *Fishing vessels.* Documented vessels of the United States with a fishery license endorsement having a permit to touch and trade (see § 4.15) and documented vessels with a fishery license endorsement which lack a permit to touch and trade are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the United States Government, if documented with a registry, coastwise trade, or Great Lakes trade endorsement, or if undocumented, intended to engage in foreign, coastwise or Great Lakes trade, are subject to this section. See paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels.

(iii) *Special purpose vessels*—(A) *Defined.* A vessel which is documented with a registry, coastwise trade, or Great Lakes trade endorsement, but is designed and used primarily for purposes other than transporting passengers or merchandise, is considered to be a "special purpose vessel."

(B) *Requirements for declaration and entry.* The owner or master of a special purpose vessel shall declare and enter all items purchased, or repairs made, outside the United States unless Customs previously has ruled the vessel is a special purpose vessel and the vessel arrives in a port of the United States two years or more after its last departure from a port of the United States. Under these circumstances, only those items (with the exception of fish nets and netting) purchased and repairs made, outside the United States during the first six months after the vessel's last departure from the United States shall be declared and entered. Fish nets and netting purchased or repaired outside the United States shall be declared and entered whether or not purchased or repaired during the first six months after departure. A copy of the applicable Customs ruling and a certification from the owner or master that the vessel was used during its last voyage primarily for purposes other than transporting passengers or merchandise shall be furnished with the declaration and entry.

(C) *Dutiable items.* If the special purpose vessel is operated in international or foreign waters two years or more after its last departure from the United States, the only dutiable items are fish nets and netting whenever purchased and any other items purchased or repairs made during the first six months after the vessel's last departure from the United States.

(iv) *LASH Barges.* Lighter-abroad-ship (LASH) barges (see §§ 4.81 and 4.81a) and similar vessels documented with a registry, coastwise trade, or Great Lakes trade endorsement or, if undocumented, intended to engage in such trade, are subject to this section.

* * * * *

9. The first sentence of section 4.15(a) is revised to read as follows:

§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade. * * *

* * * * *

10. Section 4.15(b) is revised to read as follows:

* * * * *

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

* * * * *

11. Section 4.15(d) is revised to read as follows:

* * * * *

(d) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement.

* * * * *

12. Sections 4.21(b) (11) and (12) are revised to read as follows:

§ 4.21 Exemptions from tonnage taxes.

* * * * *

(b) * * *

(11) It is a tug with a Great Lakes license endorsement on its vessel document, when towing vessels which are required to make entry.

(12) It is a documented vessel with a Great Lakes license endorsement which has touched at an intermediate foreign port or ports during a coastwise voyage.

* * * * *

13. Sections 4.60(b) (1) and (2) are revised to read as follows:

§ 4.60 Vessels required to clear.

* * * * *

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a United States citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466–1467 and not engaged in trade nor violating the Customs or navigation laws of the United States and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) Any documented vessel with a Great Lakes license endorsement which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel.[91] (see § 4.82).

* * * * *

14. Section 4.64 is revised to read as follows:

§ 4.64 Documentation.

No clearance shall be granted to any documented vessel bound to a foreign port or place unless it has a Certificate of Documentation with a registry or, if departing for Canada, a Great Lakes license endorsement.

* * * * *

15. Part 4 is amended by removing footnote number "102".

16. Section 4.68(a) is revised to read as follows:

§ 4.68 Crew; passengers.

(a) Clearance shall not be granted to any vessel bound on a foreign voyage or engaged in the whale fishery until a crew list has been delivered to the district director in duplicate on Customs and Immigration Form I–418. The district director shall certify the duplicate copy and return it to the master for later presentation to Customs (see § 4.9(b)).

* * * * *

17. Sections 4.80(a) (2) and (3), (d), and (h) are revised to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) * * *

* * * * *

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be

documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR Subpart 67.03.

* * * * *

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 883–1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901–923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

* * * * *

(h) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

* * * * *

18. Section 4.81(a) is revised to read as follows:

§ 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided for in sections 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the United States to any other such port except when transporting merchandise to a port in noncontinguous territory.[111]

* * * * *

19. The first sentences of § 4.82 (a) and (c) are revised to read as follows:

§ 4.82 Touching at foreign port while in coastwise trade.

(a) A documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which, during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggages, or mail [112] shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch.* * *

* * * * *

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is properly operating under a document with Great Lakes license endorsement.* * *

* * * * *

20. Section 4.83(b) is revised to read as follows:

§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.

* * * * *

(b) A vessel in the coastwise trade only, which is proceeding from a port of the United States on the Great Lakes via the Hudson River and otherwise than by sea, may operate under a document with a Great Lakes license endorsement and shall not be subject to the requirements for clearance, report of arrival, or entry.

* * * * *

21. The first sentence § 4.85(a) is revised to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a vessel bond (Customs Form 7567 or 7569) in a suitable amount is on file with the district director at the port of first entry.[115] * * *

* * * * *

22. Section 4.87(a) is revised to read as follows:

§ 4.87 Vessels proceeding foreign via domestic ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

* * * * *

23. Section 4.88(a) is revised to read as follows:

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which arrives at a port in the United States from a foreign port shall not be requred to unlade any merchandise manifested for a foreign destination provided a vessel bond (Customs Form 7567 or 7569) in a suitable amount is on file with the district director at the port of first entry.[119]

* * * * *

24. Section 4.90(d) is revised to read as follows:

§ 4.90 Simultaneous vessel transactions.

* * * * *

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry or, where appropriate, a Great Lakes license endorsement. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so.

* * * * *

25. The first sentence of § 4.94(a) is revised to read as follows:

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. * * *

* * * * *

26. Sections 4.96 (b) and (c) are revised to read as follows:

§ 4.96 Fisheries.

* * * * *

(b) Except as otherwise provided by treaty or convention to which the United States is a party (see paragraphs (d) and

(g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in United States territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the United States to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. "Fisheries" includes the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells or marine vegetation at any place within the territorial waters of the United States or the fishery conservation zone established by 16 U.S.C. 1811.

* * * * *

§ 4.96 [Amended]

27. Part 4 is further amended by removing section 4.96(h) and footnotes 131b and 132c.

(R.S. 251, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, secs. 309, 317, 46 Stat. 690, and amended, 696, as amended sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1309, 1317, 1624, 46 U.S.C. 2, 3; General Headnote 11, 12, Tariff Schedules of the United States))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

The first sentence of § 10.59(e) is revised to read as follows:

§ 10.59 Exemption from customs duties and internal-revenue tax.[5,6]

* * * * *

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the district director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax.* * *

(R.S. 251, as amended, secs. 309, 317, 624, 46 Stat. 690 as amended, 696, as amended 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202, 1309, 1317, 1624 (G.H. 11, 12, Tariff Schedules of the United States))

Executive Order 12291

Because these amendments do not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as these for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Inapplicability of Public Notice

Because these amendments merely clarify existing regulations, only implement a statutory requirement, and impose no additional duty or burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Robert P. Schaffer,

Acting Commissioner of Customs.

Approved: September 21, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 83-27827 Filed 10-12-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Dichlorvos

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by SDS Biotech Corp., providing for use of a 3.1-percent dichlorvos premix and providing that the requirements of section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)) are waived for the use of premixes containing 3.1 and 9.6 percent dichlorvos.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: SDS Biotech Corp., 7528 Auburn Rd., P.O. Box 348, Concord Township, Painesville, OH 44077, submitted supplements to their approved NADA's 40-848 and 49-032 requesting approval for making a 3.1-percent dichlorvos premix and that the requirements of section 512(m) of the act be waived for premixes containing 3.1 percent and 9.6 percent dichlorvos for use in making finished swine feeds. The requirements of section 512(m) of the act are presently waived for finished feeds made from feed supplements containing up to 0.768 percent of dichlorvos. The supplemental applications are approved, and the regulations are amended accordingly.

Dichlorvos as the sole drug premix meets the uniform criteria set forth in the 1971 Bureau of Veterinary Medicine memoranda for administrative waiver of the ministerial requirements of section 512(m) of the act. The pertinent provisions of the memoranda indicate that waiver is appropriate if:

1. The feeding of 1.5X to 2X the level of the product in the finished feed does not have an impact on the tissue residue picture, i.e., an impact on an existing withdrawal period or tolerance.

2. The product is not a known carcinogen or is not classed with a family of known carcinogens.

3. Appropriate documentation covering animal safety is on file. This will not require additional generation of data in that this documentation is by definition a part of the new animal drug application (NADA).

4. The margin of safety to the animal and safety to the consumer is such that the product label does not have to contain a statement such as "Use as the sole source of * * *".

5. Data are on file to demonstrate that the product is efficacious over the

approved range. This data should generally satisfy current standards for the demonstration of efficacy.

6. Except under special circumstances, the product has been used at least 3 years in the target species without significant complaints related to or associated with it. Applications of this criterion require a review of the available Drug Experience Reports.

The memoranda make explicit that because waiver of the ministerial requirements of section 512(m) is permitted only for specific efficacy claims or at specific levels of the drugs, distinct products with corresponding labeling for those claims or levels should exist. This is necessary in order to cover those premixes that can be made into finished feeds with various concentrations of drugs.

The foregoing criteria established in the 1971 memoranda constitute an interim agency policy, as discussed in the **Federal Register** of May 28, 1982 (47 FR 23446). In waiving the ministerial requirements of section 512(m) of the act, the agency has not waived the current good manufacturing practice regulations under Part 225 (21 CFR Part 225) for feed mills mixing such feeds.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Approval of these supplements is an administrative action that did not require the generation of new effectiveness or safety data. Therefore, a freedom of information summary is not required for this action.

List of Subjects in 21 CFR Part 558

Animal feeds, Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.205 by revising paragraphs (b) and (d)(4) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.205 Dichlorvos.

* * * * *

(b) *Approvals.* Premix levels of 3.1 and 9.6 percent granted to No. 052313 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(4) Finished feeds conforming to the requirements of this section processed from feed supplements containing up to 0.768 percent dichlorvos, or from premixes containing 3.1 or 9.6 percent dichlorvos, are not required to comply with the provisions of section 512(m) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

Effective date. October 13, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 3, 1983.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 83-27761 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Virginiamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by SmithKline Animal Health Products, providing for a 1.1-percent virginiamycin premix (5 grams virginiamycin activity per pound) for use in making medicated swine feed and broiler rations.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, West Chester, PA 19380, has filed a supplement to NADA 91-513 for Stafac® 11 (virginiamycin 1.1 percent, 5 grams virginiamycin activity per pound). The supplement provides for a new premix concentration. The NADA previously provided for virginiamycin premix levels of 2.2 percent, 4.4 percent, and 11 percent (Stafac® 22, Stafac® 44, and Stafac® 110).

The supplement is approved and the regulations are amended accordingly.

Approval of this supplement does not change the approved conditions of use of the drug. It permits use of a different premix concentration in addition to those previously approved. The use levels for virginiamycin in the feed remain the same. Approval does not require new effectiveness or safety data. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the original approval. In addition, a freedom of information summary for approval of the supplement is not required.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(iii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 12(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.635 is amended by revising paragraph (b)(1) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.635 Virginiamycin.

* * * * *

(b) *Approvals.* Premix levels of 1.1 percent (5 grams per pound), 2.2 percent (10 grams per pound), 4.4 percent (20 grams per pound), 11 percent (50 grams per pound), and 50 percent (227 grams per pound) granted to No. 000007 in § 510.600(c) of this chapter for use as in paragraph (f) of this section.

* * * * *

Effective date. October 13, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: October 5, 1983.

Richard A. Carnevale,

Acting Deputy Associate Director for Scientific Evaluation.

[FR Doc. 83-27760 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: By this rule, the below listed chemical preparations and mixtures which contain controlled substances have, as indicated, either been added to or deleted from the list of exempt chemical preparations set forth in § 1308.24 of Title 21 of the Code of Federal Regulations. Those which are included in the list are exempted from the application of various provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, (21 U.S.C. 801 *et seq.*), and from certain Drug Enforcement Administration (DEA) regulations. This action is a result of DEA's periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA, and is consistent with the needs of researchers, chemical analysts, and suppliers of these products.

DATES: This rule is effective December 12, 1983, subject to being suspended, reinstated, revoked, or amended by the Deputy Assistant Administrator of the Office of Diversion Control upon consideration of any comments or objections filed on or before December 12, 1983, which raise significant issues on any finding of fact or conclusion of law supporting this rule.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 633–1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

The Drug Enforcement Administration (DEA) has received applications pursuant to § 1308.23 of Title 21 of the Code of Federal Regulations (CFR) which ask that several chemical preparations containing controlled substances be granted the exemptions provided for in 21 CFR 1308.24.

It has been determined that each of the following chemical preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or nonnarcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration, that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. It has been further determined that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of researchers, chemical analysts and suppliers of these products.

DEA has also received correspondence from companies who have discontinued marketing or manufacturing products which had previously been granted exempt chemical preparation status. These discontinued products are being deleted from the list of exempt chemical preparations set forth in 21 CFR 1308.24.

These matters have been informally discussed with the Office of Management and Budget (OMB). It has been determined that they are minor internal management matters not requiring formal OMB review.

The Deputy Assistant Administrator of the DEA Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5. U.S.C. 501 *et seq.* The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and regulations.

Therefore, pursuant to the Controlled Substances Act, the regulations of the Department of Justice and the Drug Enforcement Administration, the Deputy Assistant Administrator of the DEA Office of Diversion Control hereby orders that Part 1308 of Title 21 of the Code of Federal Regulations be amended as hereinafter appears. (Sec. 201, 202, 501(b), Controlled Substances Act, 21 U.S.C. 811, 812, 871(b)).

Dated: October 4, 1983.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

§ 1308.24 [Amended]

a. Section 1308.24(i) is amended by removing from the table in paragraph (i):

Manufacturer or supplier	Product name and supplier's catalog No.	Form of product	Date of application
American Hospital Supply Corp. (Dade Division)	Moni-Trol I-X chemistry controls (level I), catalog Nos.		
	B5106–1	Vial: 5 ml	01–20–75
	B5106–5	Vial: 10 ml	01–20–75
	B5106–3	Vial: 25 ml	01–20–75
Do	Moni-Trol II-X chemistry controls (level II), catalog Nos.		
	B5106–2	Vial: 5 ml	01–20–75
	B5106–6	Vial: 10 ml	01–20–75
	B5106–4	Vial: 25 ml	01–20–75
Do	Moni-Trol I.X chemistry controls (level I), B5106–20	Vial: 5 ml, 10 vials per kit	08–18–80
Do	Moni-Trol I.X chemistry controls (level I), B5106–50	Vial: 10 ml, 50 vials per kit	08–18–80
Do	Moni-Trol II.X chemistry control (level II), B5106–30	Vial: 5 ml, 10 vials per kit	08–18–80
Do	Moni-Trol II.X chemistry control (level II), B5106–60	Vial: 10 ml, 50 vials per kit	08–18–80
Do	Stratus calibrator A catalog No. B5700–10	Bottle: 2 ml	07–15–82
Do	Stratus calibrator B	Vial: 2 ml	12–15–81
Do	Stratus calibrator C	do	12–15–81
Do	Stratus calibrator D	do	12–15–81
Do	Stratus calibrator E	do	12–15–81
Do	Stratus calibrator F	do	12–15–81
Hoffmann-LaRoche, Inc.	Abuscreen radioimmunoassay for amphetamine (125I)	Kit: 2,500 or 100 tests	11–15–82
Do	Abuscreen (125I) amphetamine derivative	Vial: 500 ml, 20 ml	11–15–82
Do	Abuscreen positive amphetamine urine control 100, 250, 500, 1,000, or 2,000 ng/ml.	Vial: 100 ml, 4 ml	11–15–82

Manufacturer or supplier	Product name and supplier's catalog No.	Form of product	Date of application
Do	Abuscreen radioimmunoassay for barbiturates (125I) No. 43042	Vial: 30 ml, 6 ml	07-06-73
Do	Abuscreen radioimmunosssay for barbiturates (125I) No. 43043	Vial: 500 ml, 100 ml	07-06-73
Do	Abuscreen radioimmunoassay for cocaine metabolite	Kit: 100 tests, 2,500 tests	02-06-76
Do	Abuscreen radioimmunoassay for cocaine metaboiite (125I) antigen reagent.	Glass vial: 30 ml, 500 ml	02-06-76
Do	Abuscreen radioimmunoassay for cocaine metabolite positive urine control.	Glass vial: 100 ml, 6 ml	02-06-76
Do	Abuscreen radioimmunoassay for methaqualone (125I) No. 43070.	Vial: 30 ml, 6 ml	01-17-74
Do	Abuscreen radioimmunoassay for methaqualone (125I) No. 43071.	Vial: 500 ml, 100 ml	01-17-74
Do	Abuscreen radioimmunoassay for morphine (125I) No. 43021	Vial: 30 ml, 6 ml	09-27-72
Do	Abuscreen radioimmunoassay for morphine (125I) No. 43028	Vial: 500 ml, 100 ml	09-27-72
Do	Abuscreen radioimmunoassay for phencyclidine	Kit: 2,500 tests, 100 tests	08-29-76
Do	Agglutex amphetamine test kit	Kit: 25, 100, or 200 tests	08-28-81
Do	Agglutex amphetamine latex regent	Vial: 2.5 ml, 5 ml	08-28-81
Do	Agglutex amphetamine positive human urine control	Vial: 5 ml, 10 ml	08-28-81
Do	Agglutex barbiturate test kit	Kit: 25, 100, or 200 tests	08-28-81
Do	Agglutex barbiturate latex reagent	Vial: 2.5 ml, 5 ml	08-28-81
Do	Agglutex barbiturate positive human urine control	Vial: 5 ml, 10 ml	08-28-81
Do	Agglutex methaqualone test kit	Kit: 25, 100, or 200 tests	08-28-81
Do	Agglutex methaqualone latex reagent	Vial: 2.5 ml, 5 ml	08-28-81
Do	Agglutex methaqualone positive human urine control	Vial: 5 ml, 10 ml	08-28-81
Do	Agglutex morphine test kit	Kit: 25, 100, 200, or 200 tests	08-28-81
Do	Agglutex morphine latex reagent	Vial: 2.5 ml, 5 ml	08-28-81
Do	Agglutex morphine positive human urine control	Vial: 5 ml, 10 ml	08-28-81

b. Section 1308.24(i) is amended by adding the following to the table in paragraph (i):

Manufacturer or supplier	Product name and supplier's catalog No.	Form of product	Date of application
American Hospital Supply Corp. (Dade Division)	Stratus phenobarbital calibrator B	Bottle: 2 ml	06-27-83
Do	Stratus phenobarbital calibrator C	Bottle: 2 ml	06-27-83
Do	Stratus phenobarbital calibrator D	Bottle: 2 ml	06-27-83
Do	Stratus phenobarbital calibrator E	Bottle: 2 ml	06-27-83
Do	Stratus phenobarbital calibrator F	Bottle: 2 ml	06-27-83
Do	Moni-Trol level I.X special order request B5106-5X	Vial: 10 ml, 10 vials per kit	06-30-83
Do	Moni-Trol level II.X special order request B5106-6X	Vial: 10 ml, 10 vials per kit	06-30-83
Do	Protopath factor 9 assay reagent	Vial: 1 ml	07-06-83
Do	Protopath factor 8 assay reagent	Vial: 1 ml	07-06-83
Do	Moni-Trol. ES level I chemistry control, assayed	Vials (10): 5 ml each	07-15-83
Do	Moni-Trol. ES level II chemistry control, assayed	Vials (10): 5 ml each	07-15-83
Analytical Systems	Data-Fi thrombin reagent	Vial: 5 ml	07-20-83
Becton-Dickinson & Co	Toxi-Lab barbiturate rapid screen, barbiturate standard	Vial: 15 ml	03-30-83
Do	Estriol (125I) tracer reagent	Bottle: 100 ml	07-12-83
Corning Medical	Estriol antiserum	Bottle: 50 ml	07-12-83
Do	Authentikit buffer	Kit: 1 vial	03-28-83
E.I. duPont de Nemours & Co., Inc	Authentifilm electrophoresis film agarose	Plates: 16 per kit	03-28-83
Helena Labs	aca Thryonine uptake analytical test pack	Plastic Pack: 1 test	08-25-83
Hoffmann-LaRoche, Inc	Titan gel LDH isoenzyme buffer	Packet: 22.7g	03-07-83
Do	Abuscreen radioimmunoassay for amphetamine (125I)	Kit: 100 tests 2,500 tests	02-15-83
Do	Abuscreen (125I) amphetamine reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (amphetamine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (amphetamine)	Vial 4 ml, 50 ml	02-15-83
Do	Abuscreen radioimmunoassay for barbiturates (125I)	Kit: 100 tests, 2,500 tests	02-15-83
Do	Abuscreen 125I—Secobarbital reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (barbiturates)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (barbiturates)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen radioimmunoassay for cocaine metabolite (125I)	Kit: 100 tests, 2,500 tests	02-15-83
Do	Abuscreen 125I benzoylecgonine reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (benzoylecgonine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (benzoylecgonine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen radioimmunoassay for methaqualone (125I)	Kit: 100 tests, 2,500 tests	02-15-83
Do	Abuscreen 125I—Methaqualone reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (methaqualone)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (methaqualone)	Vial: 4 ml 50 ml	02-15-83
Do	Abuscreen radioimmunoassay for morphine (125I)	Kit: 100 tests, 2,500 tests	02-15-83
Do	Abuscreen 125I—Morphine reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (morphine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (morphine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen radioimmunoassay for phencyclidine (PCP) (125I)	Kit: 100 tests 2,500 tests	02-15-83
Do	Abuscreen 125I—Phencyclidene reagent	Vial: 20 ml, 500 ml	02-15-83
Do	Abuscreen positive reference standard (phencyclidine)	Vial: 4 ml, 50 ml	02-15-83
Do	Abuscreen positive urine reference standard (phencyclidine)	Vial: 4 ml, 50 ml	02-15-83
Do	Agglutex amphetamine test kit	Kit: 20 tests, 100 tests	02-15-83
Do	Agglutex amphetamine latex reagent	Vial: 2 ml	06-27-83
Do	Agglutex amphetamine positive human urine control	Vial: 5 ml	06-27-83
Do	Agglutex barbiturate test kit	Kit: 20 tests, 100 tests	06-27-83
Do	Agglutex barbiturate latex reagent	Vital: 2 ml	06-27-83
Do	Agglutex barbiturate positive human urine control	Vial: 5 ml	06-27-83
Do	Agglutex morphine test kit	Kit: 20 tests, 100 tests	06-27-83
Do	Agglutex morphine latex reagent	Vial: 2ml	06-27-83
Do	Agglutex morphine positive human urine control	Vial 5 ml	06-27-83
	Agglutex phencyclidine (PCP) test kit	Kit: 20 tests, 100 tests	06-27-83

Manufacturer or supplier	Product name and supplier's catalog No.	Form of product	Date of application
Do	Agglutex phencyclidine latex reagent	Vial: 2 ml	05-27-83
Do	Agglutex phencyclidine positive human urine control	Vial: 5 ml	06-27-83
Do	Agglutex methaqualone test kit	Kit: 20 tests, 100 tests	06-27-83
Do	Agglutex methaqualone latex reagent	Vial: 2 ml	06-27-83
Do	Agglutex methaqualone positive human urine control	Vial: 5 ml	06-27-83
Do	Immunizing preparation No. 1A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 2A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 3A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 4A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 5A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 6A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 7A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
Do	Immunizing preparation No. 8A	Vial: 10 ml, 20 ml, 50 ml, 100 ml	07-12-83
ICL Scientific	Therapeutic drug control I, TDC I (high level)	Glass vial: 10 ml	04-08-83
Do	Therapeutic drug control II, TDC II (mid-level)	Glass vial: 10 ml	04-08-83
Do	Therapeutic drug control III, TDC III (low level)	Glass vial: 10 ml	04-08-83
Do	Therapeutic drug control I, II, III, tri-level TDC multipack	Glass vials (12): 10 ml	04-08-83
Do	IEP chamber buffer	Bottle: 100 ml	05-18-83
Do	IEP plate	Agar gel plate 10.2 ml	05-18-83
Miles Laboratories, Inc	TDA cross-reactivity cocktails	Glass vial: 1 ml	02-01-83
Nuclear Medical Laboratories, Inc	TETRA-TUBE RIA T4 diagnostic kit	Kit: 100 tests, 500 tests	06-03-83
Do	TETRA-TUBE tracer	Boston round amber bottle: 4oz	06-03-83
Do	TETRA-TUBE diluent	Clear Bottle: 1 dr	06-03-83
Ortho Diagnostic Systems, Inc	Ortho tri-level TDM control	Glass vial: 6 ml	05-12-83
Do	Ortho TDM control level I	Glass vial: 6 ml	05-12-83
Do	Ortho TDM control level II	Glass vial: 6 ml	05-12-83
Do	Ortho TDM control level III	Glass vial: 6 ml	05-12-83
Ortho Diagnostic Systems, Inc	Ortho activated PTT reagent	Glass vial: 30 determination size, 100	05-23-83
Do	AACC tox	Glass vial: 2.5 ml	06-17-83
Do	ORTHO serum ELISA test system for circulating immune complexes (C1q-iq Gi.	Glass vial: 0.5 ml	09-15-83
SIGMA Chemical Co	Adeosine phosphate substrate, No. 675-1	Bottle: 4 oz	07-25-73
Do	Glycerophosphate substrate, substrate, No. 675-2	Bottle: 4 oz	07-25-73
Do	Glycerophospahte substrate, No. 704-1	Bottle: 4 oz	07-25-73
Do	Acid hematoxylin solution, No. 285-2	Bottle: 25 ml, 100 ml	08-06-73
Do	Mayer's hematoxylin solution, No. MMS-1	Bottle: 25 ml, 100 ml	08-06-73
Do	SGOT single assay vial, No. 55-1	Vial: 3 ml	05-29-73
Do	SGOT single assay vial, No. 55-5	Vial:15 ml	05-29-73
Do	SGOT 10 assay vial, No. 55-10	Vial: 30 ml	05-29-73
Do	SGPT single assay vial, No. 55-1P	Vial: 3 ml	05-29-73
Do	SGPT assay vial, No. 55-5P	Vial: 15 ml	05-29-73
Do	SGPT 10 assay vial, No. 55-10P	Vial: 30 ml	05-29-73
Do	SGOT reagent No. 155-10	Vial: 30 ml	05-29-73
Do	SGOT reagent No. 155-100	Vial: 100 ml	05-29-73
Do	SGPT reagent No. 155-10P	Vial: 30 ml	05-29-73
Do	SGPT reagent No. 155-100P	Vial: 100 ml	05-29-73
Do	LDH-P reagent No. 125-10	Vial: 30 ml	05-29-73
Do	LDH-P reagent No. 125-100	Vial: 100 ml	05-29-73
Syva Co	Emit st controlled substance calibrator	Glass bottle: 3 ml	07-27-83

[FR Doc. 83-27802 Filed 10-12-83; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF-150; Ref: Notice No. 469]

Ingredient Labeling of Wine, Distilled Spirits and Malt Beverages

Correction

In FR Doc. 83-27386, beginning on page 45549, in the issue of Thursday, October 6, 1983, on page 45557, in the first column, in § 5.32(b)(5), in the last line, "on or" should read "on or after".

BILLING CODE 1505-01-M

27 CFR Part 9

[TD ATF-152; Re: Notice No. 439]

El Dorado Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms; Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in El Dorado County of California to be known as "El Dorado." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of "El Dorado" as a viticultural area and the subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate the specific grape growing area where their wines come from and will enable consumers to better identify the wines they may purchase.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite American viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical characteristics. Title 27 CFR, § 4.25a(e)(2), outlines the procedure for proposing an American viticultural area.

The El Dorado Wine Grape Growers Association in Camino, California, petitioned ATF for the establishment of an American viticultural area to be named "El Dorado." The El Dorado viticultural area is located within El

Dorado County, east of Sacramento, California.

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 439, in the Federal Register on December 14, 1982 (47 FR 55954), proposing the establishment of El Dorado as a viticultural area. ATF received 14 comments strongly favoring the El Dorado viticultural area as described in the notice of proposed rulemaking.

Historical and Current Evidence of the Name

The petitioner submitted evidence to show that several places within El Dorado viticultural area carry the name—such as the towns of El Dorado and El Dorado Hills, El Dorado Hills Vineyard, Eldorado Vineyard and Winery in Camino, El Dorado County and the El Dorado National Forest.

In the notice of proposed rulemaking comments were requested as to possible confusion for the consumer since the El Dorado viticultural area name is also the name of the county in which it is located. A county appellation requires 75 percent of the grapes from that appellation whereas a viticultural area requires 85 percent. Twelve commenters supported the name El Dorado as the viticultural area name and no commenters stated a potential for consumer confusion. The comments stated the name El Dorado is used widely in the area and that the entire viticultural area is within El Dorado County. The commenters also stated the name El Dorado has been in existence in the area for over 100 years and that the county was later named El Dorado as was a town, the National Forest, a vineyard, a winery and many other businesses.

Boundaries

Since the soil, climate and terrain limit the grape growing areas to between the 1,200-foot to 3,500-foot elevation levels, the boundaries of the viticultural area delineate the area at these elevations. According to the petitioner, the natural boundaries of El Dorado County—the North Fork of the American River, the Middle Fork of the American River, and the Rubicon River on the north, and the South Fork of the Cosumnes River on the south—serve as the northern and southern boundaries, respectively, of the El Dorado viticultural area. Range lines define the east and west boundaries and are more easily located on the maps than are the elevation contour lines; however, these range lines generally follow elevation changes that geographically distinguish the El Dorado viticultural area from the surrounding area.

ATF has carefully considered the evidence and comments received and has decided to approve the El Dorado viticultural area boundary lines as proposed in the notice of proposed rulemaking and found in 27 CFR 9.61 of this final rule.

Geographical Characteristics

The petitioner stated the eastern boundary represents the upper limit of any agricultural activity since the rocky and mountainous terrain and climate of the Sierra Navada Mountains preclude any farming further east of the eastern boundary line. The northern and southern boundaries are the same as those of the El Dorado County.

Throughout the year the evenings and nights are cooled by breezes originating from the Sierra Navada Mountains to the east. The area has none of the winter fog that is typical of Great Central Valley and the coastal valleys of California. Average annual rainfall ranges from 33 to 45 inches varying with the elevation. Precipitation increases 3 to 4 inches for every 300-foot rise in elevation. The higher average elevation of "El Dorado," as opposed to the lower foothill areas, and the Central Valley guarantees it a more favorable growing climate as far as rainfall is concerned. Indian summer with cool nights and warm days extends the growing season into October. Little rainfall occurs until late October and November.

The "El Dorado" is located on the western slope of the central Sierra Nevada Mountains. It is dominated by steeply dipping, faulty and folded metamorphormic rocks that have been intruded by igneous rocks. Overlaying the bedrock in many places are mantels of river gravel and volcanic debris. The soils vary in texture and depth but are all formed from common magma materials which are residual (formed in place) and igneous in origin. In contrast, the soils in the lower foothill and Central Valley regions consist of a mixture of materials caused by erosion and are sedimentary (transported materials of ocean sediments and stream deposits). Also, the soil is acidic in the El Dorado viticultural area and more alkaline in the areas to the west and south.

Miscellaneous

ATF does not wish to give the impression by approving El Dorado as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of El Dorado wines.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not expected to apply to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have subsequent secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and the comments received are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Ave., NW., Washington, D.C.

Drafting Information

The author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include § 9.61 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.61 El Dorado.

* * * * *

Subpart C—Approved American Viticultural Areas

Paragraph 2. Subpart C is amended by adding § 9.61 to read as follows:

§ 9.61 El Dorado.

(a) *Name.* The name of the viticultural area described in this section is "El Dorado."

(b) *Approved maps.* The approved U.S.G.S. topographic maps (7.5 series; quadrangles) showing the boundaries of the El Dorado viticultural area, including quadrangles showing the area within the boundaries, are as follows:

(1) "Pilot Hill, California," 1954 (photorevised 1973);

(2) "Auburn, California," 1953 (photorevised 1973);

(3) "Greenwood, California," 1949 (photorevised 1973);

(4) "Georgetown, California," 1949 (photorevised 1973);

(5) "Foresthill, California," 1949 (photorevised 1973);

(6) "Michigan Bluff, California," 1952 (photorevised 1973);

(7) "Tunnel Hill, California," 1950 (photorevised 1973);

(8) "Slate Mountain, California," 1950 (photorevised 1973);

(9) "Pollock Pines, California," 1950 (photorevised 1973);

(10) "Stump Spring, California," 1951 (photorevised 1973);

(11) "Caldor, California," 1951 (photorevised 1973);

(12) "Omo Ranch, California," 1952 (photorevised 1973);

(13) "Aukum, California," 1952 (photorevised 1973);

(14) "Fiddletown, California," 1949; (15) "Latrobe, California," 1949 (photorevised 1973);

(16) "Shingle Springs, California," 1949;

(17) "Coloma, California," 1949 (photorevised 1973);

(18) "Garden Valley, California," 1949 (photorevised 1973);

(19) "Placerville, California," 1949 (photorevised 1973);

(20) "Camino, California," 1952 (photorevised 1973);

(21) "Sly Park, California," 1952 (photorevised 1973);

(c) *Boundaries.* The boundaries of the El Dorado viticultural area which is located in El Dorado County, California, are as follows:

(1) The beginning point of the boundaries is the intersection of the North Fork of the American River (also the boundary line between El Dorado and Placer Counties) and the township line "T. 11 N./T. 12 N." ("Pilot Hill" Quadrangle);

(2) Thence northeast along the North Fork of the American River to its divergence with the Middle Fork of the American River, continuing then, following the Middle Fork of the American River to its intersection with the Rubicon River which continues as the boundary line between El Dorado and Placer Counties ("Auburn," "Greenwood," "Georgetown," "Foresthill," and "Michigan Bluff" Quadrangles);

(3) Thence southeast along the Rubicon River to its intersection with the range line "R. 11 E./R. 12 E." ("Tunnel Hill" Quadrangle);

(4) Thence south along the range line through T. 13 N. and T. 12 N., to its intersection with the township line "T. 12 N./T. 11 N." ("Tunnel Hill" and "Slate Mountain" Quadrangles);

(5) Thence east along the range line to its intersection with the range line "R. 12 E./R. 13 E." ("Slate Mountains" and "Pollock Pines" Quadrangles);

(6) Thence south along the range line to its intersection with the township line "T. 11 N./T. 10 N." ("Pollock Pines" Quadrangle);

(7) Thence east along the township line to its intersection with the range line "R. 13 E./R. 14 E." ("Pollock Pines" and "Stump Spring" Quadrangles);

(8) Thence south along the range line through T. 10 N., T. 9 N., and T. 8 N. to its intersection with the South Fork of the Cosumnes River (also the boundary line between El Dorado and Amador Counties) ("Stump Spring" and "Caldor" Quadrangles);

(9) Thence west and northwest along the South Fork of the Cosumnes River to its intersection with range line "R. 11 E./R. 10 E." ("Caldor," "Omo Ranch," "Aukum," and "Fiddletown" Quadrangles);

(10) Thence north along the range line to its intersection with the township line "T. 8 N./T. 9 N." ("Fiddletown" Quadrangle);

(11) Thence west along the township line to its intersection with range line "R. 10 E./R. 9 E." ("Fiddletown" and "Latrobe" Quadrangles);

(12) Thence north along the range line to its intersection with the township line "T. 10 N./T. 11 N." ("Latrobe," "Shingle Springs," and "Coloma" Quadrangles);

(13) Thence east along the township line approximately 4,000 feet to its intersection with the range line "R. 9 E./R. 10 E." ("Coloma" Quadrangle);

(14) Thence north on the range line to its intersection with the township line "T. 11 N./T. 12 N." ("Coloma" Quadrangle); and

(15) Thence west along the township line to the point of beginning ("Coloma" and "Pilot Hill" Quadrangles).

Signed: September 13, 1983.

W. T. Drake,

Acting Director.

Approved: October 4, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-27879 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-151; Ref: Notice No. 452]

Potter Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms; Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Mendocino County, California, to be known as "Potter Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of "Potter Valley" as a viticultural area and subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify the wine they may purchase.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and in wine advertising.

Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical characteristics. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

The California Wine Company in Mendocino County, California, petitioned ATF to establish a viticultural area to be known as "Potter Valley." The boundaries of the Potter Valley viticultural area were developed after a meeting of a majority of the growers who own or operate vineyards in the area. The petitioner stated that the 12 growers in or near Potter Valley were contacted and no group or individual was found to be in opposition to the boundaries. There are approximately 11,000 acres of vineyards found in all parts of the Potter Valley viticultural area.

In response to this petition ATF published a notice of proposed rulemaking, Notice No. 452, in the Federal Register on February 9, 1983 (48 FR 5955), proposing the establishment of Potter Valley as a viticultural area. No comments were received on the Potter Valley viticultural area.

Geographical Features

Potter Valley is located in the east central part of Mendocino County and consists of approximately 27,500 acres of valley floor surrounded by mountains on all sides. The floor of Potter Valley ranges in elevation from about 920' to 1020' with the surrounding mountains ranging to over 600' above the valley floor. The petitioner stated that the boundaries range into the mountainous areas surrounding the valley floor so as not to exclude small areas of tillable land. Within the Potter Valley is a transitional climate dominated at times by the coastal influence of the Pacific Ocean or by interior continental air masses. Potter Valley is classified as a Region III grape-growing area. The petitioner submitted soil maps showing the soils of Potter Valley to be primarily Cole, San Ysidro, Rotella and Pinole series while the nearby "Redwood Valley" is predominately Noyo and Newton soils.

Evidence of the Name

The petition stated that the name "Potter Valley" is well-known in the local area and has been used on wine labels distributed on a national basis. The petitioner also stated that the Pacific Gas and Electric Company has maintained a facility in the area known as the "Potter Valley Powerhouse." Maps published by the U.S. Department of the Interior identify the Potter Valley region, and a School District and Fire District are named Potter Valley.

Miscellaneous

ATF does not wish to give the impression by approving Potter Valley as a viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Potter Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605 (b)), that the final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in—

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition is available for inspection during normal business hours at the following location: ATF Reading Room, Rm 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Ave., NW., Washington, DC.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (45 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.82 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.82 Potter Valley.

Par. 2. Subpart C is amended by adding § 9.82 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.82 Potter Valley.

(a) *Name.* The name of the viticultural area described in this section is "Potter Valley."

(b) *Approved map.* The approved maps for the Potter Valley viticultural area are the U.S.G.S. maps entitled "Potter Valley Quadrangle, California," 1960, and "Ukiah Quadrangle, California," 1958, 15 minute series (topographic).

(c) *Boundaries.* The Potter Valley viticultural area is located in Mendocino

County, California. The boundaries are as follows:

(1) From the beginning point at the southeast corner of quadrant 36 and southwest corner of quadrant 32 (a point where Mendocino and Lake Counties border on the T. 17 N.–T. 16 N. township line), the boundary runs northwest to the northeastern corner of quadrant 4, on the T. 18 N.–T. 17 N. township line;

(2) Then west to the northwest corner of quadrant 1;

(3) Then south to the southwest corner of quadrant 36;

(4) Then east to R. 12 W.–R. 11 W. range line at the southeast corner of quadrant 36;

(5) Then south to Highway 20;

(6) Then southeast on Highway 20 to where Highway 20 passes from quadrant 20 to quadrant 21; and

(7) Thence northeast, returning to the point of beginning.

Signed: September 13, 1983.

W. T. Drake,

Acting Director.

Approved: October 4, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-27677 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-154; Ref: Notice No. 455]

Catoctin Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in parts of Frederick and Washington Counties in western Maryland to be known as "Catoctin." This final rule is the result of a petition submitted by Mr. W. Bret Byrd, proprietor of a bonded winery (Byrd Vineyards) in the viticultural area. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of this viticultural area and the subsequent use of the name Catoctin as an appellation of origin on labels and in advertisements will allow wineries to better designate the derivation of their wines and will enable consumers to better identify and differentiate the wines they may purchase.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in Part 4, Title 27, CFR. These regulations provide for the establishment of definite viticultural areas. They also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which amended Title 27, CFR, by adding a new Part 9 entitled "American Viticultural Areas." This part lists all American viticultural areas approved for use as appellations of origin.

An American viticultural area is defined in §§ 4.25a(e)(1) and 9.11 as a delimited grape-growing region distinguishable by geographical features. Any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Under the procedures for proposing a viticultural area outlined in §§ 4.25a(e)(2) and 9.3(b), a petition must contain evidence, historical or current, that the proposed area is—

(a) Locally and/or nationally known by the name specified;

(b) Encompassed by appropriate boundaries; and,

(c) Possesses geographical features (climate, soil, elevation, physical features, etc.) which distinguish its viticultural features from surrounding areas.

ATF was petitioned by Mr. W. Bret Byrd, proprietor of a bonded winery known as Byrd Vineyards, to establish a viticultural area in western Maryland to be known as "Catoctin." In response to the petition, ATF published in the **Federal Register** on February 9, 1983, a notice of proposed rulemaking (Notice No. 455, 48 FR 5958) concerning the establishment of the Catoctin viticultural area and solicited written comments from the public.

General Description

The viticultural area lies west of the town of Frederick in western Maryland. It encompasses an area of 265 square miles (170,000 acres), in parts of Frederick and Washington Counties. The area consists of a large intermountain valley and upland areas immediately surrounding the valley. The eastern and western boundaries are distinguished by Catoctin Mountain and South Mountain, respectively. The northern and southern boundaries are the Maryland-Pennsylvania State line and the Potomac River, respectively.

There are approximately 84.5 acres planted to grapes for commercial purposes. The acreage devoted to grape-growing is widely dispersed. In 1980, approximately 31.5% of the total commercial grape acreage in Maryland was planted in the viticultural area. In addition, scattered throughout, are many small vineyards, generally under an acre, which are used by the owners for private purposes. There is one bonded winery, operated by the petitioner, with a 30 acre vineyard and six (6) commercial vineyard operations.

Evidence of the Name

The name of the viticultural area was documented by the petitioner. The name "Catoctin" is derived from a word in the Algonquin Indian language and means "speckled rock." This type of rock abounds in the area. Since the 1700's, the name has been applied to many natural and man-made features in the area, such as Catoctin National Park, Catoctin Creek, Catoctin Mountain, and Catoctin Valley (a.k.a. Middletown Valley). After evaluating the petition, ATF believes "Catoctin" is the most appropriate name for the viticultural area.

Boundaries and Geographical Features

The boundaries of the Catoctin viticultural area roughly approximate the boundaries of that portion of Land Resource Area No. 130 which is in Maryland. Land Resource Areas are geographic areas of land determined by the U.S. Soil Conservation Service to be associated on the basis of particular patterns of soil, climate, water resources, land use, elevation, and topography.

Average annual rainfall for the Catoctin viticultural area is 36–42 inches; to the north and east, average yearly rainfall is 40–42 inches; south of the Catoctin viticultural area average annual rainfall is 38–40 inches, and to the west of the viticultural area average annual rainfall is 38–46 inches.

Soils in the Catoctin viticultural area are characteristic of those found on mountains, elevated intermountain areas, or in intermountain valleys. The soil in the intermountain valley area is almost entirely of the Myersville-Fauquier-Catoctin association. The surrounding uplands are primarily composed of the Dekalb, Clymer, Edgemont, Chandler, Talladega, Highfield, and Fauquier soil series in various associations. Soils outside the viticultural area to the east are mostly shallow soils of red shale sandstone and

limestone. West of the viticultural area the soils are well drained, medium textured soils.

Comments

No comments were received during the comment period. Having analyzed and evaluated the evidence contained in the petition, ATF is adopting the Catoctin viticultural area as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and appropriate maps are available for public inspection during normal business hours at the following location: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C.

Drafting Information

The author of this document is Jim Whitley, Specialist, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended (27 U.S.C. 205)) 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended by adding the title of § 9.67, reading as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.67 Catoctin.

Par. 2. Subpart C is amended by adding § 9.67, reading as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.67 Catoctin.

(a) *Name.* The name of the viticultural area described in this section is "Catoctin."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Catoctin viticultural area are 12 U.S.G.S. maps in the scale 1:24,000. They are—

(1) "Point of Rocks Quadrangle, Maryland—Virginia," 7.5 minute series, 1970;

(2) "Buckeystown Quadrangle, Maryland," 7.5 minute series, 1952 (Photorevised 1971);

(3) "Frederick Quadrangle, Maryland," 7.5 minute series, 1953 (Photorevised 1980);

(4) "Catoctin Furnace Quadrangle, Maryland," 7.5 minute series, 1953 (Photorevised 1979);

(5) "Blue Ridge Summit Quadrangle, Maryland—Pennsylvania," 7.5 minute series, 1953 (Photorevised 1971);

(6) "Emmitsburg Quadrangle, Maryland—Pennsylvania," 7.5 minute series, 1953 (Photorevised 1971);

(7) "Smithsburg Quadrangle, Maryland—Pennsylvania," 7.5 minute series, 1953 (Photorevised 1971);

(8) "Myersville Quadrangle, Maryland," 7.5 minute series, 1953 (Photorevised 1971);

(9) "Funkstown Quadrangle, Maryland," 7.5 minute series, 1953 (Photorevised 1971);

(10) "Keedysville Quadrangle, Maryland—West Virginia," 7.5 minute series, 1978;

(11) "Harpers Ferry Quadrangle, Virginia—Maryland—West Virginia," 7.5 minute series, 1969; and

(12) "Charles Town Quadrangle, West Virginia—Virginia—Maryland," 7.5 minute series, 1978;

(c) *Boundaries.* The Catoctin viticultural area is located in western Maryland and encompasses parts of Frederick and Washington Counties. From the beginning point at the point where U.S. Highway 15 crosses the Potomac River and enters the land mass of Maryland on the "Point of Rocks Quadrangle" map, the boundary runs—

(1) Northerly 1,100 feet in a straight line to the point of intersection with a 500-foot contour line;

(2) Then northeasterly along the meanders of the 500-foot contour line on the "Point of Rocks Quadrangle," "Buckeystown Quadrangle," "Frederick Quadrangle," "Catoctin Furnace Quadrangle," "Blue Ridge Summit Quadrangle," and "Emmitsburg Quadrangle" maps to the point of intersection with the Maryland—Pennsylvania State line on the "Emmitsburg Quadrangle" map;

(3) Then west along the Maryland-Pennsylvania State line on the "Emmitsburg Quadrangle," "Blue Ridge Summit Quadrangle," and "Smithsburg Quadrangle" maps to the point of intersection with the first 800-foot contour line lying west of South Mountain on the "Smithsburg Quadrangle" map;

(4) Then southwesterly along the meanders of the 800-foot contour line on the "Smithburg Quadrangle," "Myersville Quadrangle,"Funkstown Quadrangle," and "Keedysville Quadrangle" maps to the point of intersection with an unnamed light duty road (known locally as Clevelandville Road) north of the town of Clevelandville on the "Keedysville Quadrangle" map;

(5) Then southerly along the unnamed light duty road to the point of intersection with Reno Monument Road;

(6) Then southwesterly 13,500 feet in a straight line to the point lying at the intersection of Highway 67 and Millbrook Road;

(7) Then westerly along Millbrook Road to the point of intersection with Mount Briar Road;

(8) Then northerly along Mount Briar Road to the point of intersection with a 500-foot contour line;

(9) Then northerly along the 500-foot contour line to the point of intersection with Red Hill Road;

(10) Then southerly along the 500-foot contour line to the point of intersection with Porterstown Road;

(11) Then south-southwesterly 29,000 feet in a straight line to the most eastern point on the boundary line of the Chesapeake and Ohio Canal National Historical Park lying north of the town of Dargan;

(12) Then southwesterly 7,500 feet in a straight line to the point of the "Harpers Ferry Quadrangle" map lying approximately 600 feet northwest of Manidokan Camp at the confluence of an unnamed stream and the Potomac River; and

(13) Then easterly along the meanders of the Potomac River on the "Harpers Ferry Quadrangle," "Charles Town Quadrangle," and "Point of Rocks Quadrangle" maps to the point of beginning.

Signed: September 9, 1983.

Stephen E. Higgins,

Director.

Approved: October 4, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-27888 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF-153; Ref: Notice No. 441]

The Lake Michigan Shore Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the southwestern corner of the State of Michigan to be known as "Lake Michigan Shore." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Lake Michigan Shore as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the porcedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Mr. Charles W. Catherman, Jr., of St. Julian Wine Company, Inc., and Mr. Michael E. Byrne, of Warner Vineyards, Inc., petitioned ATF to establish a viticultural area in the southwestern corner of the State of Michigan to be known as "Lake Michigan Shore." The area consists of about 1,280,000 acres and totally encompasses the Counties of Berrien and Van Buren in addition to portions of Allegan, Kalamazoo and Cass Counties. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 441, in the **Federal Register** on December 14, 1982 (47 FR 55959), proposing the establishment of the Lake Michigan Shore viticultural area.

Comments

Five comments were received during the comment period. Four were from wineries located within the proposed viticultural area and one was from the Van Buren County Extension Office, Cooperative Extension Service, Michigan State University and the U.S. Department of Agriculture. Three of the four wineries fully support the proposed Lake Michigan Shore viticultural area. In addition, the Cooperative Extension Service (Van Buren County Extension Office) also fully supports the proposal.

One of the wineries located within the proposed area stated in their comment that they oppose the establishment of the Lake Michigan Shore viticultural area for the following reasons:

1. The name gives the consumer the impression that the land in question is near the shore or close to Lake Michigan when in fact some of the area is located 30 to 60 miles away from the actual shoreline.

2. The statement in Notice No. 441 that the entire area receives the tempering "lake effect" of Lake Michigan is of doubtful validity in that certain vinifera species cannot be successfully or commercially grown in this region.

3. The argument for this proposed viticultural area is predicated on grape quantities grown rather than varieties. This commenter states that he feels the use of appellations was to help consumers compare fine wines from different regions. He feels that the use of the Concord variety as a basis for a regional designation would only serve to confuse consumers when they compare wines of the Napa Valley to those of Lake Michigan Shore.

4. Geographically, this area should probably use the Valporaiso Moraine as a potential boundary due to its close lakeshore proximity. Also, parts of northern Indiana should be included in the area.

ATF does not agree with the four reasons given by this commenter for not establishing a Lake Michigan Shore viticultural area. In the first place, we do not feel that the name "Lake Michigan Shore" is misleading. The western boundary of this area is the shoreline of Lake Michigan. The "lake effect" is felt a good distance inland from the shoreline which is why grapes can be grown throughout the Lake Michigan Shore area. This proximity to Lake Michigan and the influence that Lake Michigan exerts on the local climate is the fundamental factor that permits commercially successful viticulture in this area. Consequently, even though the eastern boundary of this area extends in some places up to approximately 45 miles away from the Lake Michigan shoreline, we do not feel that naming this entire area "Lake Michigan Shore" would be misleading to the consumer.

Secondly, the fact that certain vinifera species cannot be successfully or commercially grown in the "Lake Michigan Shore" viticultural area does not mean that the area does not receive the tempering "lake effect" of Lake Michigan. Viticultural areas are not based only on vinifera grapes but on all grape species capable of producing wine. Currently, the "lake effect" helps make it possible to grow about 17 varieties of American, French hybrid, and vinifera grapes in the "Lake Michigan Shore" area.

Thirdly, ATF took both the grape quantities grown and the grape varieties grown into consideration before proposing the "Lake Michigan Shore" viticultural area. Futhermore, the purpose of appellations is not necessarily to help consumers compare fine wines from different regions but rather to inform consumers as to where the grapes used in any particular bottle of wine were grown. Consequently, the use of the Concord variety (or any other grape variety) with a Lake Michigan Shore appellation would not confuse consumers when they compare wines of other viticultural areas to those of Lake Michigan Shore.

And finally, the Valporaiso Moraine was not used as a boundary because it does not extend far enough away from the shoreline to include all the area which is influenced by the "lake effect". In addition, northern Indiana was not included in the "Lake Michigan Shore" viticultural area because Mr. T. Michael Thomas and Mr. A. Robert Earl of the Van Buren County Extension Office, Cooperative Extension Service, Michigan State University and the U.S. Department of Agriculture, stated that the area in northern Indiana that receives "lake effect" climate modification is and will continue to be rather ill-defined. The lake effect is conditioned by the direction from which the mass of a front or weather system is coming from. The lake effect is greatest when fronts are from the west to northwest when the whole expanse of the lake has a chance to moderate the weather system. When from any other compass direction, including southwest, the fronts do not get modified and act the same as they would in Wisconsin or Illinois. Southwest to northeast wind flows are common in spring and fall and have always made fruit production outside of the proposed area somewhat risky. Because of the lack of predictability of the lake effect and the economics of wine grape production, it is unlikely that any substantial acreage will be established in the areas adjacent to the Lake Michigan Shore viticultural area as delineated in this final rule.

General Information

The petition and attached documents show that Lake Michigan Shore is located in the southwestern corner of the State of Michigan. The area totally encompasses the counties of Berrien and Van Buren in addition to portions of Allegan, Kalamazoo and Cass Counties. The western boundary of the area is the eastern shore of Lake Michigan. Lake Michigan is the feature which is the basis for the distinct climate and the name "Lake Michigan Shore." This area includes nine commercial wineries, approximately 930 grape growers, and 14,472 acres of grapes.

Commercial grape growing within the State of Michigan first began in 1867 in Van Buren County. The majority of grapes grown in Michigan are Concord grapes which are used in the production of grape juice and jelly. Approximately 20 percent of the State's grapes are used in wine and account for 3,330 tons of grapes. The wine grapes grown in the "Lake Michigan Shore" viticultural area comprise 17 varieties of American, French hybrid, and vinifera grapes. The counties of Berrien and Van Buren account for 83 percent of the State's grape production, with the three remaining counties in the area comprising an additional 14 percent. The remaining three percent of the State's grape production primarily comes from the previously approved Leelanau Peninsula viticultural area (47 FR 13328, T. D. ATF-99), 200 miles north along the Lake Michigan shore. The previously approved Fennville viticultural area (46 FR 46318, T. D. ATF-91) is within the northwest corner of the Lake Michigan Shore viticultural area.

Evidence Relating to the Name

The proposed viticultural area has specifically been known by two names, "Fruit Belt" and "Lake Michigan Shore," while also being generally referred to as "Southwestern Michigan" or "Western Counties." Several State and national books on wine and grapes refer to this area generally as the area behind the sand dunes on the Lake Michigan shore. After carefully evaluating the petition for this viticultural area, ATF believes that "Lake Michigan Shore" is the most appropriate name for this area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), the viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents contained substantial geographic and climatic information which show that:

(a) The entire "Lake Michigan Shore" viticultural area receives the tempering "lake effect" of Lake Michigan. This lake effect moderates the winter and summer temperature extremes, and delays budding of the vines beyond the late spring frosts. The lake effect also causes generally uniform climatic conditions, since large bodies of water retain heat and cold and react closer to temperature fluctuations. The number of frost-free growing days in this area ranges from 155 to 175 days, normally during the period of May 10 through October 13. Immediately to the north and east (the cities of Holland and Jackson, respectively) the dates for last spring and first fall frosts (frost-free growing season) are May 25 through September 24. To the immediate south (South Bend, Indiana) the frost-free growing season is May 30 through September 30. Further, the South Bend area has consistent January mean minimum temperatures of 2 to 4 degrees Fahrenheit lower than the "Lake Michigan Shore" area. The significance of the lake effect is shown by the 116 year history of grape growing in the area and the fact that 97 percent of the State's grapes are grown in the area.

(b) The composition of the soils within the area are not a definitive distinguishing factor. However, the topography of the area does distinguish the area because it is of "glacial moraine" construction as opposed to "till plain" construction for the surrounding areas. Glacial moraines are more conducive to grape growing because of the creation of needed air drainage, whereas till plains flatten out and are unsuitable for grape growing.

(c) The western boundary, the eastern shore of Lake Michigan, is a natural boundary from which the area draws its name and receives the necessary lake effect which moderates the climate. The northern, eastern, and southern boundaries generally identify the extent to which the glacial moraine soil construction changes to till plain.

This viticultural area encompasses a large area with generally uniform geographic and climatic features, as opposed to small microviticultural areas which exhibit very definitive geographic and climatic features such as the "Fennville" viticultural area which is located within this area in the northwest corner.

After evaluating the petition for the Lake Michigan Shore viticultural area, ATF has determined that due to the geographical and climatic features of the Lake Michigan Shore area, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Lake

Michigan Shore viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Lake Michigan Shore wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

A copy of the petition and comments, along with the appropriate maps with boundaries marked, are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW, Washington, DC.

Drafting Information

The principal author of this document is Robert L. White, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.79. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.79 Lake Michigan Shore.

Par. 2. Subpart C is amended by adding § 9.79 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.79 Lake Michigan Shore.

(a) *Name.* The name of the viticultural area described in this section is "Lake Michigan Shore."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lake Michigan Shore viticultural area are four U.S.G.S. maps, 1:250,000 series. They are entitled: (1) Chicago (1953, revised 1970); (2) Fort Wayne (1953, revised 1969); (3) Racine (1958, revised 1969); and (4) Grand Rapids (1958, revised 1980).

(c) *Boundaries.* The Lake Michigan Shore viticultural area is located in the southwestern corner of the State of Michigan. The boundaries of the Lake Michigan Shore viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows: Starting at the most northern point, the intersection of the Kalamazoo River with Lake Michigan, southeast along the winding course of the Kalamazoo River for approximately 35 miles until it intersects the Penn Central railroad line just south of the City of Otsego; south along the Penn Central railroad line, through the City of Kalamazoo, approximately 25 miles until it intersects the Grand Trunk Western railroad line at the community of Schoolcraft; southwest along the Grand Trunk Western railroad line approximately 35 miles to the Michigan/Indiana State line; west along the Michigan/Indiana State line approximately 38 miles until it meets Lake Michigan; then north along the eastern shore of Lake Michigan approximately 72 miles to the beginning point.

Signed: September 13, 1983.

W. T. Drake,

Acting Director.

Approved: October 4, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-27887 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Parts 170 and 240

[T.D. ATF-149; Re: Notice Nos. 458 and 320]

Elimination of Subpart XX and Revision of Sample Requirements for Formula Wines

AGENCY: Bureau of Alcohol, Tobacco and Firearms; Treasury.

ACTION: Treasury decision.

SUMMARY: This Treasury decision eliminates 27 CFR Part 240, Subpart XX, Calculations for Wine Production, and requirements for samples of salted wine and special natural wine submitted with applications for formula approval in 27 CFR Parts 170 and 240 respectively. The elimination of Subpart XX and the sample requirements of 27 CFR 170.686 and 240.441 reduces a regulatory burden on affected industries.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION: On May 22, 1979, ATF published Notice No. 320 (44 FR 29691), proposing recodification and revision of wine regulations involving 27 CFR Parts 170, 231 and 240, and requested comment from interested parties. The comment period on this advance notice of proposed rulemaking was extended twice, allowing a total time of 15 months for comments. The Bureau received comments covering a wide range of problems concerning wine regulations.

A few comments received suggested that the regulation sections in Part 240, Subpart XX, could be eliminated since these sections primarily contain tables,

charts and sample calculations which are informational and not appropriate as regulations. Since an elimination of Subpart XX would be a major reduction in the volume of wine regulations, ATF published a notice of proposed rulemaking (48 FR 8088), Notice No. 458, in the **Federal Register** on February 25, 1983. In that notice, ATF also proposed to eliminate a requirement for submitting samples of salted wine and special natural wine when applying for formulas.

In Notice No. 458, comment was specifically requested on whether a publication should be done to include the useful tables, charts and calculations in Subpart XX. Also, comment was requested on our proposal to include a formula and sample calculations in the amelioration sections instead of the amelioration tables in Subpart XX.

Comments were received from the Wine Institute and United Vintners, Inc. Both supported the elimination of Subpart XX from wine regulations and requirements for samples. United Vintners supported having a pamphlet with the useful tables, charts and sample calculations. The Wine Institute did not favor ATF publishing a pamphlet and opposed including a formula and sample calculations in the sections on amelioration. The Wine Institute sent us a copy of their letter to the editors of "Technology of Winemaking" asking that useful tables, charts, and calculations now found in Subpart XX be included in their next edition.

This final rule eliminates Subpart XX with the 74 sections of tables, charts, sample calculations and instructions on how to use alcohol testing equipment. Eliminating these sections is the first major step in reducing the volume of existing wine regulations to make it easier for winemakers to comply with those regulations which are necessary. Most of the sections in Subpart XX have been of no use to winemakers for some time. There are 34 sections in Subpart XX devoted to a detailed use of several types of alcohol test instruments. Most of these instruments are not used by winemakers today and for those instruments still available, the manufacturer's instructions are more up to date than the instructions in Subpart XX.

Winemakers do not have a need for (or they have available from other sources) the tables, charts and sample calculations in Subpart XX. These tables, charts and sample calculations do not address specific regulatory production requirements (those requirements are contained in wine production regulations) so these sections are informational and not regulatory. For example, there are tables for determining the maximum allowable ameliorating material that can be added to wine with an acid level of 5.0 to 7.69 grams per 1000 milliliters in the juice. Nearly all wineries which add ameliorating material have a starting acid in the juice well above the 7.69 gram level; therefore, the maximum amount of ameliorating material that can be added to 1000 gallons of juice, 538.4 gallons, is the only figure necessary for the winemaker to remember. Also, many wineries use less than the maximum allowable of ameliorating material, so the table in Subpart XX would be unnecessary in these instances.

This final rule is one of several to be issued by the Bureau in revising all wine regulations. When all the wine regulations are revised, a Treasury decision will be issued to recodify the wine regulations into a new Part 24. Any problems involved with the implementation of this final rule or any suggestions on any wine regulations will be considered in the recodification Treasury decision. Send any comments or suggestions to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-385.

List of Subjects

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting requirements, Surety bonds, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquids, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). These requirements have been approved by OMB.

No comments were received on the notice of proposed rulemaking published in the **Federal Register** leading to this final rule that addressed the collection of information requirements.

Disclosure

Copies of the written comments received are available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended), 27 CFR Parts 170 and 240 are amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. Section 170.686 is revised to remove the requirement for submission of samples of salted wines with a formula application. As revised, § 170.686 reads as follows:

§ 170.686 Formulas.

(a) *Requirement for formula.* Before producing any nonbeverage wine, the proprietor must receive approval of the formula by which the wine, or wine product made from wine, is to be rendered unfit for beverage use. The formula and process shall be described on Form 5120.29. Each formula filed under the provisions of this section shall be numbered in serial order, starting with No. 1, and shall be prefixed with the symbol "NB." Except for salted wine made in accordance with § 170.613(a)(6), one 750 milliliter sample of the base wine or wine product to be used, and one 750 milliliter sample of the nonbeverage wine made therefrom shall be submitted under separate cover at the time of filing the formula. The Director may require the submission of samples of the material to be used in rendering the wine or wine products unfit for beverage use. All ingredients to be used will be shown on the Form 5120.29 as well as the quantities required to make 100 gallons of the nonbeverage wine. The formula should also show the intended use of the nonbeverage wine. The process used in rendering the wine or wine products unfit for beverage use shall be stated in detail.

(b) *Change in formula.* Any material change in characteristics of the finished product will require the filing of a new formula, even though the ingredients and process may be the same as the approved formula.

PART 240—WINE

Par. 2. The table of contents is revised to remove Subpart XX.

§ 240.162 [Amended]

Par. 3. Section 240.162 is revised by removing the last sentence referencing Subpart XX.

Par. 4. Section 240.441 is revised to remove the requirement for submission of samples with formula application. As revised § 240.441 reads as follows:

§ 240.441 Formula required.

(a) *General.* Before producing any special natural wine, the proprietor shall receive approval of the formula by which it is to be made. The formula and process will be described on Form 5120.29. All ingredients used will be shown on Form 5120.29 in the quantities required to make 1,000 gallons of special natural wine. In the case of roots, herbs, or similar materials, the quantity need not be stated, but each ingredient will be listed. The process of production will be stated in detail. The Director may require that a sample of the special natural wine be submitted with the formula, if he deems it necessary for the proper administration of these regulations.

(b) *Changes in formula.* Any material change in the flavor or other characteristics from those of the approved formula will require the filing of a new formula, even though the ingredients may be the same. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production are permissible only after approval of the new Form 5120.29. Where a change in the quantity of ingredients or in the process of production does not alter the character of the product, the change may be accomplished by filing a rider to the formula with, and obtaining approval from, the Director. The rider shall identify the original formula by number, date of approval, name of the product, and by name and number of the wine cellar, shall specify the quantity of the ingredients or the change in process, and shall be signed and processed in the same manner as the original formula. (72 Stat. 1386; 26 U.S.C. 5386).

§§ 240.960–240.1029 [Removed]

Par. 5. Subpart XX, §§ 240.960–240.1029, is removed.

Signed: August 5, 1983.

Stephen E. Higgins,

Director.

Approved: September 21, 1983.

J. M. Walker, Jr.,

Assistant Secretary, (Enforcement and Operations).

[FR Doc. 83-27091 Filed 10-11-83; 1:10 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Approval of Permanent Program Amendment From the State of Illinois Under the Surface Mining Reclamation and Enforcement Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the Illinois permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment relates to the authority of the State to deny an application for a permit or permit revision unless the applicant submits proof that all required Federal reclamation fees have been paid. On July 27, 1983, OSM received the regulation amendment from the Illinois Department of Mines and Minerals (IDMM), in response to a June 7, 1983 letter from OSM notifying that State that a program amendment was required.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the modifications to the Illinois program meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Director is approving the program amendment.

The Federal rules codifying decisions concerning the Illinois program are being amended to implement these actions.

EFFECTIVE DATE: The decision to approve the amendment is effective October 13, 1983.

FOR FURTHER INFORMATION CONTACT: James Fulton, Director, Springfield Field Office, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1982 **Federal Register.**

Sections 510(b) and 510(c) SMCRA limit the issuance of new permits and permit renewals to those applicants who are in compliance with the requirements of SMCRA. As specified in section 402 of SMCRA and Subchapter R of 30 CFR, the operators of coal surface mines are to pay reclamation fees to the Secretary of the Interior. Further, section 402(f) of SMCRA specifically mandates full cooperation with the Secretary by all Federal and State agencies in the enforcement of this provision.

It was brought to the Secretary's attention that the Illinois program did not contain regulatory language consistent with 30 CFR 786.19(h) which requires the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR

Subchapter R has been paid. The Illinois regulation at § 1786.19(h) required that operators pay all fees required by the State's regulations.

To resolve this issue, on February 1, 1983, the Director, OSM, sent a letter to Illinois to request that Illinois confirm that § 1786.19(h) also requires the applicant to submit proof that all required Federal reclamation fees have been paid, consistent with 30 CFR 786.19(h). As of June 1, 1983, Illinois had not formally responded to OSM's February 1 letter.

Pursuant to 30 CFR 732.17(e), OSM notified Illinois by letter of June 7, 1983, that a State program amendment was required because conditions or events indicated that the approved State program no longer met the requirements of SMCRA and the Federal regulations. The letter notified Illinois, pursuant to 30 CFR 732.17(f)(1), that it must submit to the Secretary within 60 days of receipt of notification either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of SMCRA and the Federal regulations, and a timetable for enactment which is consistent with established administrative or legislative procedures. OSM also noted that the Secretary would propose adding a new condition to the Illinois program requiring the State to amend its program by a specified date to incorporate requirements no less effective than 30 CFR 786.19(h). The proposed rule announcing intent to impose a new condition and requesting public comment was published June 16, 1983 (48 FR 27550).

II. Discussion of the Amendment

On July 27, 1983, IDMM responded to OSM's June 7, 1983 letter. The IDMM enclosed a Notice of Proposed Rulemaking to be published in the August 12, 1983 *Illinois Register*. The notice includes a proposed amendment to the Illinois regulations at Section 1786.19(h). The full text of the amendment follows (new language is underlined):

Section 1786.19 Criteria for permit approval or denial.

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the Department finds in writing on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

* * * * *

(h) The applicant has submitted proof that all fees required by these regulations *and 30 CFR Chapter VII, Subchapter R* have been paid.

OSM published a notice in the **Federal Register** on August 12, 1983, announcing receipt of the amendment and inviting public comment on whether the proposed modification was no less effective than the Secretary's regulations. OSM also noted that if the amendment was approved, there would no longer be any need to impose a new condition of approval.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Illinois on July 27, 1983, meets the requirements of SMCRA and 30 CFR Chapter VII. The amended Illinois rule requires the applicant to affirmatively demonstrate and the IDMM to find in writing that the permit applicant has submitted proof that all Federal reclamation fees have been paid before any permit or permit revision application may be approved. This requirement is consistent with 30 CFR 786.19(h) which requires that such fees be paid prior to approving a permit application.

However, the Illinois rule has not been published as a final rule in the *Illinois Register*. The Director is approving the rule provided that it is finally promulgated in identical form to the rule submitted to and reviewed by OSM.

IV. Public Comments

No public comments were received on the program amendment. The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the July 27, 1983, Illinois program amendment. Because the amendment is being approved, the Director has determined that there is no longer any need to impose a new condition of approval. However, as noted above, because the Illinois rule has not been fully promulgated, the rule will not take effect for purposes of the State program until the revised rule has been promulgated as a final rule by Illinois.

VI. 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 will not impose any new requirements; rather, it will ensure 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 913

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

Accordingly, 30 CFR Part 913 is amended as set forth herein.

Dated: October 6, 1983.

J. R. Harris,

Director, Office of Surface Mining.

PART 913—ILLINOIS

1. 30 CFR 913.15 is amended by adding a new paragraph (c) as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(c) The following amendment that was submitted to OSM July 27, 1983 is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM: Illinois revised rule 1786.19(h).

Authority: Pub. L. 95–87, 30 U.S C. 1201 *et seq.*

[FR Doc. 83-27831 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Approval of Amendments and Removal of Certain Conditions on the Approval of the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments and the removal of two conditions of the Secretary of the Interior's approval of the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On July 18, 1983, OSM received statutory amendments from the Ohio Division of Reclamation intended to satisfy conditions (a) and (1) of the Secretary's approval of the Ohio program concerning (1) the definition of public roadway and (2) Reclamation Board of Review appeals.

After providing opportunity for public review and comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Ohio program satisfy the two conditions of approval and meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary is removing the two conditions and approving the statutory amendments. The Federal rules at 30 CFR Part 935 which codify decisions concerning the Ohio program are being amended to implement these actions.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)–(f)(10), (g), (h)(1)–(h)(3), (i)(1)–(i)(3), (j) and (k)(1)–(k)(5). In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiencies by February 8, 1983. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k)(1) and (k)(2). On May 24, 1983, the Secretary approved certain of the amendments and removed conditions (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1) and (k)(2). The Secretary established a deadline of August 8, 1983, for the State to meet conditions (a), (c) and (h)(1), and extended to that same date, the deadline for the State to meet conditions (f)(7), (k)(3), (k)(4), and (k)(5). Additionally, the Secretary imposed two new conditions (l) and (m) which also carried a deadline of August 8, 1983.

II. Submission of Revisions

On July 18, 1983, Ohio submitted a proposed program amendment consisting of statutory amendments to satisfy conditions (a) and (l) due August 8, 1983. The statutory amendments are contained in Am. Sub. H.B. No. 291 which was enacted July 1, 1983. The changes amend Chapter 1513 of the Ohio Revised Code (ORC).

Condition (a), as set forth in the August 10, 1982 **Federal Register**, requires the State to enact legislation amending ORC Section 1513.01(G)(2) to eliminate the phrase "but not to include public roadways." As discussed in Finding 1.2 of the Secretary's approval (47 FR 34688), the State's definition of "coal mining operations" included this phrase, making it inconsistent with section 701(28)(b) of SMCRA.

The State submitted an amendment on January 6, 1983, which would have excluded public roadways, "unless the roadway has been constructed for access to or haulage of coal from a coal mining and reclamation operation or unless public access to the roadway has been denied or restricted." On May 24, 1983, the Secretary found that condition (a) had not been satisfied because the proposed Ohio amendment was not as effective as the Federal rule. OSM had clarified the issue of when a road will be excluded from being considered a part of the affected area of a mine, in final rules published August 2, 1982 (47 FR 33439) and April 5, 1983 (48 FR 14814). For a public road to be excluded from the affected area of a mine, it must meet three criteria:

(1) The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(2) The road is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and

(3) There is substantial (more than incidental) public use of the road.

Therefore, the Secretary allowed the State until August 8, 1983 to submit revised provisions. Ohio has now submitted Am. Sub. H.B. No. 291 which amends ORC § 1513.01(G)(2) and 1513.01(U) to remove from the definition of "coal mining operation" the language defining public roadways and adds a separate definition of public roadway which is, in substance, the same as the Federal regulatory definition.

Condition (1) requires the State to enact legislation amending ORC sections 1513.13(A)(1) and 1513.13(C) to provide that:

(1) The time for filing a notice of appeal is within 30 days after receipt of a notice, order or decision;

(2) a hearing on a request for temporary relief shall be held in the locality of the permit area; and

(3) temporary relief decisions by the Chairman of the Reclamation Board of Review are judicially reviewable.

Ohio has submitted Am. Sub. H.B. No. 291 which amends ORC Section 1513.13 in order to satisfy condition (1). Rather than provide for judicial review of decisions of the Chairman of the Board, the State has provided for an appeal to the Board first before a court may review a decision on temporary relief.

OSM published a notice in the **Federal Register** on August 10, 1983, announcing receipt of the amendments and requesting public comment on whether the proposed amendments are no less effective than the Secretary's regulations and whether the amendments satisfy the conditions of approval. The public comment period ended September 9, 1983. A public hearing scheduled for August 25, 1983, was not held because no one expressed a desire to present testimony. The Administrator of the Environmental Protection Agency transmitted his written concurrence on the amendments on October 5, 1983.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on July 18, 1983, meet

the requirements of SMCRA and 30 CFR Chapter VII, as noted below.

Condition (a)

The Secretary found that in the Ohio program conditionally approved on August 16, 1982, the Ohio statutory definition of "coal mining operations" included the undefined phrase "but not to include public roadways," thus making it inconsistent with section 701(28)(b) of SMCRA (Finding 1.2, 47 FR 34688). On May 24, 1983, the Secretary found that a January 6, 1983, Ohio amendment defining public roadways was not consistent with the revised Federal rules clarifying when roads will be excluded from being considered part of the affected area of a mine. The Secretary now finds that Ohio has amended its statute at ORC 1513.01(G)(2) to remove from the definition of "coal mining operation" the language defining public roadways and has added at ORC 1513.01(U) a separate definition of public roadway. The new statutory definition of public roadway is no less effective than 30 CFR 700.11 and 701.5.

Condition (1)

The Secretary found that in the amendments submitted by Ohio on January 6, 1983 (48 FR 23185, May 24, 1983), the Ohio statute did not provide that: (1) The time for filing a notice of appeal is within 30 days after receipt of a notice, order, or decision: (2) a hearing on a request for temporary relief shall be held in the locality of the permit area; and (3) temporary relief decisions are judicially reviewable. The Secretary now finds that Ohio has amended its statute at ORC §§ 1513.13(A)(1), 1513.13(C)(1) and 1513.13(C)(3) to provide for appeals and temporary relief procedures consistent with sections 525(a)(1), 525(c)(1) and 526 of SMCRA.

IV. Public Comments

No public comments were received on the proposed program amendments. Acknowledgements were received from the following Federal agencies: Environmental Protection Agency and Soil Conservation Service. The disclosure of Federal agency comments is made pursuant to Section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Secretary's Decision

The Secretary, based on the above findings, is approving the July 18, 1983, amendments to the Ohio program, and is removing conditions (a) and (1).

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 would not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would 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, 30 CFR Part 935 is amended as set forth herein.

Dated: September 27, 1983.

William P. Pendley,

Deputy Assistant Secretary for Energy and Minerals.

PART 935—OHIO

1. 30 CFR 935.11 is amended by removing and reserving paragraphs (a) and (1).

2. 30 CFR 935.15 is amended by adding a new paragraph (e) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(e) The following amendments were approved effective October 13, 1983: Ohio Revised Code Sections 1513.01(G)(2), 1513.01(U), 1513.13(A)(1), 1513.13(C)(1) and 1513.13(C)(3), as amended by Am. Sub. H.B. No. 291, enacted July 1, 1983.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

[FR Doc. 83-27832 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 11-95-83]

Establishment of Special Local Regulations for the "Bud Warmington International Grand Prix"

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Bud Warmington Grand Prix an offshore power boat race in the vicinity of Long Beach, Newport Beach, and Catalina Island, CA. This event will be held on 16 October 1983 (17 October inclement weather date). The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 16 October 1983 and terminate 17 October 1983.

FOR FURTHER INFORMATION CONTACT: LTJG J. N. ARROYO, Commander(bb), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822 (213) 590-2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and was impracticable as they are being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 6 September 1983, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The principal individuals involved in drafting this rule are CDR T. A. WELCH, Chief, Boating Safety Division, Eleventh Coast Guard District, and LT JOSEPH R. McFAUL, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulations

California Offshore Power Boat Racing Association "Bud Warmington Grand Prix" will be conducted between Long Beach, Newport Beach, and Catalina Island, CA beginning 16 October 1983. This event will have approximately 50 Special Offshore Class Race Boats that could pose hazards to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law

enforcement vessel or an event committee boat.

Evaluation

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated areas can be opened periodically for the passage of commercial and recreational vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations: In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35–11–95 to read as follows:

§ 100.35–11–95 California Offshore Power Boat Assn./Bud Warmington Grand Prix.

(a) *Regulated areas:* The following regulated area will be closed intermittently to all vessel traffic from 9:00 AM to 3:30 PM on 16 October 1983 (17 October 1983 Inclement weather date): Area 1: Encompasses a radius of .75 nautical miles centered on R "4" Bell Buoy, located 1.7 nautical miles southwest of Newport Beach Pier, CA. Area 2: Encompasses a radius of 1 nautical mile centered on Oil Island Eva, located 2.8 nautical miles west of Huntington Beach Pier, CA. (closed 10:00 AM to 12:00 noon). Area 3: Is bounded by a line connecting the following geographical landmarks: The eastern tip of the Long Beach breakwater; The Spruce Goose Dome; The northmost side of Oil Island Grissom; The northmost side of Oil Island White; Oil Island Esther; thence back to the eastern tip of the Long Beach breakwater (closed 10:00 AM to 12:00 noon).

Special Local Regulation

Area 4: Encompasses a radius of .25 nautical miles centered on LAT 33 20' 50" N, LONG 118 18'45"W off Abalone Point, Catalina Is, CA. (closed 9:30 AM to 2:30 PM).

(b) *Special Local Regulations.* (1) No vessels, other than participants, U.S. Coast Guard operated and employed small craft, public vessels, state and local law enforcement vessels, event committee boats, and the sponsor's vessels shall enter or remain in the regulated areas during the above hours, unless cleared for such entry by the Coast Guard.

(2) When hailed by a Coast Guard or Coast Guard Auxiliary vessel patrolling the race areas, a vessel shall come to an immediate stop. Vessels shall comply with all directions of the designated Coast Guard Regatta Patrol.

(3) These regulations are temporary in nature and shall cease to be further enforced and in effect at the end of the periods set forth in (a) above on 16 October 1983. Should weather cause postponement of this race the above regulations will be in effect for the same periods on 17 October 1983. Postponement information will be broadcasted by the Coast Guard on VHF–FM Channel 22.

(46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: October 3, 1983.

J. F. Culbertson,

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

[FR Doc. 83-27814 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 82-016]

Drawbridge Operation Regulations: Oceanport Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of New Jersey Transit Corporation and the Consolidated Rail Corporation, the Coast Guard is changing the regulations governing the Oceanport Creek drawbridge at Oceanport, New Jersey to provide that the draw need not open during weekdays (except holidays) from 6 a.m. to 7:45 a.m. and from 5:30 p.m. to 7:30 p.m. The draw will also be required to open on signal from 15 May through 15 September and will continue to open upon four hours notice at all other times. This change is being made to be responsive to mariners using the waterway and also to eliminate openings for recreational vessels during peak railway commuter periods. This action will continue to relieve the bridge owner of the burden of having a person constantly available to open the draw, will accommodate current needs of railway traffic, and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on November 14, 1983.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District. (212) 668–7994.

SUPPLEMENTARY INFORMATION: On January 27, 1983, the Coast Guard published a proposed rule (48 FR 3782) concerning this amendment. The Commander, Third Coast Guard District, also published this proposal as a Public Notice dated May 10, 1983. Interested persons were given until March 14 and June 10, 1983, respectively to submit comments on these notices.

Drafting Information

The drafters of this rule are Ernest J Feemster, project manager, and LCDR Frank E. Couper, project attorney.

Discussion of Comments

Seven responses to the public notice were received concerning the proposed action. One had no objection, one strongly supported the proposed regulations, and five suggested changes. Two of the five persons suggesting changes wanted to eliminate commuter closure hours on weekends and holidays during the period the bridge opens on signal while the other three suggested various less restrictive regulations (from a navigational standpoint). The Coast Guard agrees with the two that communter closure hours will not be necessary on weekends and holidays (May 15–September 15). It is also felt that requiring the bridge to open on advance notice, during times the bridge will not be required to be manned, will respond to concerns expressed by the other three respondents. The bridge was illegally modified in 1976 so as to be unable to open and has only recently been put in working condition. Retention of an advance notice during minimal traffic periods will be necessary as a result to allow the Coast Guard to collect (previously unavailable) information regarding needs of the mariner. This Notice of Final Rulemaking is, therefore, modified to account for the concerns expressed by the respondents.

The Notice of Proposed Rulemaking contained the exception that vessels with tows would be passed through the bridge at all times as soon as possible. Since no commercial vessels use the waterway, however, and since no history of such usage has been found, this final rule is modified to eliminate this exception but includes the provision that the bridge shall open as soon as possible for a vessel in distress since this is a more likely occurrence.

The Commander, Third Coast Guard District issued Public Notice 3–523 (Aug. 1, 1983) which implemented these regulations in the form of temporary Special Regulations. These temporary regulations expired September 15, 1983.

No draft of final economic evaluation has been prepared because of minimal

economic impact. This is because the existing regulations will be more responsive to the mariner and will provide for needs of rail traffic during rush hours.

Economic Assessment and Certification

These final regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be major rules. They 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 22 May 1980). 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 also certified that these rules will not have a significant economic impact on a substantial number of small entities since no entities will be adversely affected by the regulations.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising § 117.225(f)(7) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(7) Oceanport Creek: the New Jersey Transit bridge, mile 8.4 near Oceanport. The draw shall open on signal from May 15 through September 15 between 5 a.m. and 9 p.m. except that the bridge need not open 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays (exclusive of holidays). The draw shall open on signal upon four hours notice from May 15 through September 15 between 9 p.m. and 5 a.m., and from September 16 through May 14 except it need not open 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays (exclusive of holidays). The draw shall open as soon as possible for a public vessel of the United States and for a vessel in distress at all times.

* * * * *

(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: September 27, 1983.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 83-27816 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP San Francisco Regulation 83-3]

Safety Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones in San Francisco Bay on 12 and 13 October 1983. These zones are needed to provide for safety of life on navigable waters during U.S. Navy activities for the annual Navy Fleet Week. Entry into these zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: These regulations are effective on 12 October 1983 between 1:30 p.m. and 2:30 p.m. PDT and on 13 October 1983 between 11:15 a.m. and 2:00 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Lt K. E. Johnson, Marine Safety Officer San Francisco Bay, (415) 437-3073.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking 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 is not feasible because of time constraints and is contrary to the public interest because of the necessity to ensure safety of life on navigable waters during Navy Fleet Week activity.

Drafting Information

The drafters of this regulation are LT K. E. JOHNSON, project officer for the Captain of the Port, and LT C. A. AMEN, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

The events requiring this regulation will begin at 11:30 a.m. PDT, 13 October 1983 with a U.S. Navy Blue Angels aerial demonstration lasting until 12:00 noon. The demonstration will center on a flight line between Fort Point and Pier 39, San Francisco, with the airplanes flying as low as 100' above the water. The Blue Angels will stage a practice demonstration on 12 October 1983 between 1:30 p.m. and 2:30 p.m., PDT in the same area. The aerial demonstration will be followed by a parade of 10 U.S. Navy ships proceeding inbound at a speed of 12 knots from the Golden Gate Bridge, along the San Francisco city front to a point south of the San Francisco—Oakland Bay Bridge. The column will then disperse to individual berths.

The Safety Zones established by this regulation are necessary to ensure that vessels remain safely away from the naval activities. The Blue Angels require a clear area along their flight line for navigational reference. Two Coast Guard vessels will be stationed within that clear area to serve as navigational reference points. The airplanes will fly at extremly low altitudes above the water, necessitating that vessels be kept clear for their own safety. The Navy ships preceeding through the Bay in column formation are large, relatively unmaneuverable vessels, requiring unobstructed waters for safe navigation and to maintain a column formation.

The Safety Zone established for the Blue Angels demonstration will restrict access to marinas and commercial docks. This restriction may result in some inconvenience to vessels berthed within the safety zones. All efforts have been made to minimize this inconvenience by limiting the duration and size of the zones as much as possible, consistent with safety requirements. Additionally, Captain of the Port permission has been written into the regulation to allow vessels berthed within the zones to depart their berths during the existence of the zones. Such vessels are nonetheless strongly advised to depart their berths prior to the effective times to avoid transitting the zones.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water), Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended by adding a new Sec. 165. T12-3 to read as follows:

§ 165.T12-3 Safety Zones: San Francisco Bay Fleet Week Activities.

(a) *Locations.* The following areas are safety zones:

(1) The waters of San Francisco Bay between Fort Point and Pier 39, San Francisco, from the shoreline out to 1,000 yards, on 12 October 1983 from 1:30 to 2:30 p.m. PDT and on 13 October 1983 from 11:15 a.m. to 12:00 noon PDT.

(2) The waters surrounding a column of 10 U.S. Navy ships proceeding inbound at a speed of 12 knots from the Golden Gate Bridge along the San Francisco city front to a point south of

the San Francisco-Oakland Bay Bridge, on 13 October 1983 from 12 noon to 2:00 p.m. PDT. This moving Safety Zone extends out 200 yards on either side of a line running from a point 200 yards in front of the lead ship, through each succeeding vessel, to a point 200 yards astern of the last ship in the column, including all waters between the vessels.

(b) *Regulations.* (1) In accordance with the general regulations in Sec. 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port.

(2) Vessels berthed in the stationary zones established in paragraph (a)(1) of this section are authorized to navigate within 50 yards of the San Francisco city front in order to exit the zone towards the east.

(3) All vessels are prohibited from passing between the U. S. Navy ships in formation or otherwise entering the safety zone established in paragraph (a)(2) of this section.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: October 5, 1983.

K. F. Bishop, Jr.,

Captain of the Port, USCG Marine Safety Office, San Francisco Bay.

[FR Doc. 83-27817 Filed 10-12-83; 8:45 a.m.]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD8-83-06]

Safety Zone; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Safety Zone regulations for the Mississippi River Gulf Outlet (MRGO), the Michoud Canal, and the Inner Harbor Navigation Canal (IHNC) by modifying the reporting points.

The Safety Zone requires all vessels meeting certain criteria to report to the New Orleans VTS when passing certain locations. Based on user input, these reporting points are being modified to make compliance with the regulation easier and to improve navigational safety. The new reporting points are all on the same side of the channel and are the checkpoints that the pilots use for their internal purposes.

EFFECTIVE DATE: This Final Rule became effective on October 13, 1983.

FOR FURTHER INFORMATION CONTACT: LCDR R. E. FORD, Port Safety Officer, or LTJG S. EVANS, Waterways Safety Officer, c/o U.S. Coast Guard, Captain of the Port, 4640 Urquhart Street, New Orleans, Louisiana 70117, Telephone (504) 589-7108.

SUPPLEMENTARY INFORMATION: On June 4, 1981, the Coast Guard published interim final rules in the **Federal Register** for the regulations (46 FR 29933).

Interested persons were requested to submit comments and seven comments were received. The publishing of timely responses to these seven comments in Final Rulemaking action was delayed by the subsequent unanticipated closure of the New Orleans Vessel Traffic Service (VTS) in March 1982.

Upon reactivation of New Orleans Vessel Traffic Service (VTS) a Final Rule was published in the **Federal Register** on May 31, 1983 (48 FR 24074). The comments solicited in the **Federal Register** on June 4, 1981 were addressed in that **Federal Register** of May 31, 1983. This rulemaking slightly modifies the Safety Zone.

A Notice of Proposed Rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing and NPRM and delaying its effective date would be contrary to the public interest since an immediate modification is needed to facilitate navigation.

Drafting Information: The principal persons involved in drafting this rule are LT T. L. McCARTY, USCG, Project Officer, c/o Commander, Eighth Guard District (mps) and CDR R. A. BRUNELL, USCG, Project Attorney, c/o Commander, Eighth Coast Guard District (d1), Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana, 70130, Telephone (504) 589-6188.

Discussion of Regulations: The Safety Zone requires all vessels meeting certain criteria to report to the New Orleans VTS when passing certain locations. Based on user input, these reporting points are being modified to make compliance with the regulation easier and to improve navigational safety. The new reporting points are all on the same side of the channel and are the checkpoints that the pilots use for their internal purposes. The old reporting points were Lighted Buoy #1, MRGO Light 33, and MRGO Light 96. The new reporting points are Lighted Bell Buoy #2, MRGO Lighted Bell Buoy 20 and MRGO Light 94. The changes to this regulation are not substantive and do not significantly change the features of the Safety Zone.

In addition, a typographical error is corrected in § 165.801(b) by adding commas. The section currently reads Vessels including tows over * * * The section should read Vessels, including tows, over * * *

Summary of final evaluation: These regulations are considered to be insignificant 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 evaluation under the Regulatory Flexibility Act of 1980 has not been conducted. The changes to this regulation are not substantive. For these reasons, it has been determined that this action will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Waterways.

In consideration of the foregoing, the Coast Guard amends Part 165 of Title 33 Code for Federal Regulations as follows:

PART 165—[AMENDED]

33 CFR 165.801 is amended by revising (b), (c) and (d) to read as follows:

§ 165.801 Mississippi River Gulf Outlet.

* * * * *

(b) Vessels, including tows, over 600 feet in length, or over 80 feet in beam, or with a draft in excess of 30 feet, and intending to transit that portion of the Safety Zone from its seaward entrance at Lighted Bell Buoy 2 (LLNR 2015) to the jetty at MRGO Light 62 (LLNR 2068) must receive permission to enter or move within the Safety Zone. Vessels meeting this criteria will not meet or overtake each other in this seaward portion of the Safety Zone unless the pilots and/or operators of both vessels consider such passage to be safe and agree to it. Such an agreement must be reported beforehand to the VTS.

(c) All inbound vessels meeting the criteria of paragraph (b) of this section shall notify New Orleans Vessel Traffic Service (VTS) two hours prior to intended entry into the Safety Zone (in order to be scheduled), and immediately prior to entry (in order to obtain permission to enter), and upon passing MRGO Lighted Bell Buoy 2, and MRGO Lighted Bell Buoy 20 (LLNR 2031), MRGO Light 62, MRGO Light 94 (LLNR 2082.50) and MRGO Light 114 (LLNR 2082).

Notification shall be made on Channel 12 VHF-FM. Notification prior to intended entry which cannot be accomplished on Channel 12 VHF-FM due to extreme range, shall be made by telephone to the VTS at (504) 589-2772

or 589–2773 by the vessel's agent or via the marine operator.

(d) All outbound vessels meeting the criteria of paragraph (b) of this section shall notify VTS two hours prior to intended movement within the Safety Zone (in order to be scheduled), and immediately prior to movement (in order to obtain permission to move), and immediately after heading fair in the outbound direction, and as the vessel passes the junction of the MRGO and Gulf Intracoastal Waterway (Mile 60.0 MRGO), MRGO Light 114, MRGO Light 94, and MRGO Light 62, and MRGO Lighted Bell Buoy 20 and MRGO Lighted Bell Buoy 2. Notification two hours prior to movement shall be made by telephone to the VTS at (504) 589–2772 or 549–2773. Other notification shall be made on channel 12 VHF–FM. Channel 11 VHF–FM may be used in lieu of Channel 12 by vessels above the Paris Road Bridge (mile 60.9 MRGO).

* * * * *

(33 U.S.C. 1225, 1231; 49 CFR 1.46(n)(4))

Dated: August 18, 1983.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 83-27834 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2448-4]

Standards of Performance for New Stationary Sources; Delegation to the State of Oregon.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related notice.

SUMMARY: EPA is announcing approval of a request dated July 8, 1983 submitted from the State of Oregon Department of Environmental Quality for delegation of additional source categories under New Source Performance Standards (NSPS) and an amendment to a source category as approved in their OAR 340–25–510 through 25–675. These additional source categories are: metal furniture surface coating, publication rotogravure printing, large appliance surface coating, metal coil surface coating, asphalt processing and asphalt roofing and an amendment to storage vessels. This delegation will amend the November 11, 1975, December 3, 1981 and September 3, 1982 delegations to the State of Oregon.

DATE: Effective date October 7, 1983.

ADDRESSES: The related material in support of this delegation may be examined during normal business hours at the following locations:

Central Docket Section (10A–83–15), Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

Department of Environmental Quality, 522 S.W. Fifth, Yeon Building, Portland, Oregon 97207

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch M/S 532, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1949, FTS: 399–1949

SUPPLEMENTARY INFORMATION: On November 11, 1975, the Regional Administrator of EPA, Region 10, delegated to the State of Oregon Department of Environmental Quality (DEQ) the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary sources as promulgated by EPA prior to January 1, 1975. This delegation was published in the **Federal Register** on February 20, 1976 (41 FR 7749). An additional delegation was made on December 3, 1981 (46 FR 62066) and September 3, 1982 (47 FR 38982).

At a July 8, 1983 Environmental Quality Commission meeting, an additional request of five source categories and an amendment under NSPS was authorized. After EPA review of the request submitted by DEQ, a letter dated September 27, 1983 was sent to DEQ and is as follows:

William H. Young,

Director, State of Oregon, Department of Environmental Quality, P.O. Box 1760, Portland, Oregon 97207

Dear Mr. Young: At the July 8, 1983 EQC meeting, a request for delegation of authority to enforce additional source categories under New Source Performance Standards (NSPS) was approved. We have reviewed that request and hereby delegate to the DEQ authority to enforce five additional categories in accordance with the original delegation of NSPS to DEQ on November 11, 1975. Those sources are: Metal Furniture Surface Coating, Publication Rotogravure Printing, Large Appliance Surface Coating, Metal Coil Surface Coating, Asphalt Processing and Asphalt Roofing.

An amendment to the Storage Vessels (Ka, 60.114a) is hereby approved. This delegation and amendment is subject to the conditions outlined in the original letter of delegation dated November 11, 1975 and published in the **Federal Register** on February 20, 1976 (41 FR 7749). In addition, EPA hereby delegates to the State of Oregon the authority to enforce revisions to NSPS which have been promulgated through June 2, 1983.

A Notice announcing this delegation will be published in the **Federal Register** in the near future. The Notice will state, among other things, that effective October 7, 1983, all reports required pursuant to the Federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective October 7, 1983, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of the delegation.

An advance copy of this **Register** is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

cc: J. Herlihy, 000

This Notice is published to notify the public that a delegation has taken place.

(Sec. 110, Clean Air Act (42 U.S.C. 7410(a) and 7502))

Dated: September 27, 1983.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 83-27049 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[AD-FRL-2449-7]

Standards of Performance for New Stationary Sources and National Emission Standards For Hazardous Air Pollutants; Delegation of Authority to the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: This notice announces the re-delegation of authority by the Environmental Protection Agency to the State of New York to implement and enforce certain portions of the Federal Standards of Performance for New Stationary Sources ("NSPS") and the National Emission Standards for Hazardous Air Pollutants ("NESHAPs"), pursuant to Section 111(c)(1) and 112(d)(1) of the Clean Air Act. It also announces the delegation of additional NSPS source categories.

NSPS and NESHAPs are air pollution control regulations promulgated under the Clean Air Act (42 U.S.C. 7401 et. seq.). NSPS are applicable to certain categories of new air pollution sources. NESHAPs are applicable to certain categories of sources which emit certain pollutants considered hazardous.

EFFECTIVE DATE: This action is effective October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch, Air and Waste Management Division, Region 11 Office, 26 Federal Plaza, New York, New York 10278, (212) 264–9627.

SUPPLEMENTARY INFORMATION: On August 10, 1983, Commissioner Henry G. Williams of the New York State Department of Environmental Conservation (DEC) accepted authority from the Environmental Protection Agency (EPA) to implement and enforce certain portions of the federally established Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) as follows:

NSPS, 40 CFR Part 60, Subparts:

- E Incinerators
- F Portland Cement Plants
- G Nitric Acid Plants
- H Sulfuric Acid Plants
- I Asphalt Concrete Plants
- J Petroleum Refineries
- K Storage Vessels for Petroleum Liquids
- Ka Storage Vessels for Petroleum Liquids Constructed after 5/18/78
- L Secondary Lead Smelters
- M Secondary Brass & Bronze Ingot Production
- N Iron & Steel Plants
- O Sewage Treatment Plants
- P Primary Copper Smelters
- Q Primary Zinc Smelters
- R Primary Lead Smelters
- S Primary Aluminum Reduction Plants
- T Wet Process Phosphoric Acid Plants
- U Superphosphoric Acid Plants
- V Di-Ammonium Phosphate Plants
- W Triple Superphosphate Plants
- X Granular Triple Superphosphate Plants
- Y Coal Preparation Plants
- Z Ferroalloy Production Facilities
- AA Electric Arc Furnaces in the Steel Industry
- BB Kraft Pulp Mills
- CC Glass Manufacturing Plants
- DD Grain Elevators
- EE* Metal Furniture Surface Coating
- HH Lime Manufacturing Plants
- KK* Lead-Acid Battery Manufacturing Plants
- MM Automobile & Light-Duty Truck Surface Coating Operations
- NN* Phosphate Rock Plants
- PP Ammonium Sulfate Manufacture
- QQ* Graphic Arts Industry: Production Rotogravure Printing
- SS* Industrial Surface Coating: Large Appliances
- TT* Metal Coil Surface Coating
- UU* Asphalt Processing and Asphalt Roofing Manufacture

*Newly Delegated

NESHAPS, 40 CFR Part 61, Subparts:

- B Asbestos [excepting only §§ 61.22(b) (Surfacing of Roadways with Asbestos-Containing Materials); 61.22(d) (Demolitions and Renovations); 61.22(i) (Insulating); and 61.22(j)(2), 61.22(k)(2), and 61.25 (all three of which relate to waste disposal)].
- C Beryllium
- D Beryllium Rocket Motor Firing
- E Mercury
- F Vinyl Chloride

EPA's determination that the delegation request should be approved is based upon the Agency's review of the New York State Environmental Conservation Law Article 19 (Air Pollution Control) and Article 71, Title 21 (Enforcement of Title 19); and relevant portions of Title 6 Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"), in particular, Parts 200, 201, 202 and 212.

EPA determined that such delegation is, therefore, appropriate and so notified the Commissioner of DEC in a letter dated July 14, 1983. This letter identified the conditions under which delegation would be approved. DEC subsequently accepted delegation in a letter dated August 10, 1983. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch, at the Environmental Protection Agency, Region 11 Office, 26 Federal Plaza, New York, New York 10278.

Effective immediately, all correspondence, reports and notifications required by the delegated NSPS and NESHAPs should be submitted to the appropriate regional office of the New York State Department of Environmental Conservation or the central office located at 50 Wolf Road, Albany, N.Y. 12233, Attention: Division of Air, Bureau of Source Control.

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

This Notice is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. Sections 7411 and 7412).

Dated: September 21, 1983.

Jacqueline E. Schafer,

Regional Administrator.

[FR Doc. 83-27651 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-2449-8]

Standards of Performance for New Stationary Sources; Delegation of Authority to the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the Commonwealth of Puerto Rico to implement and enforce additional source categories of the Standards of Performance for new Stationary Sources (NSPS). This delegation was requested by the Puerto Rico Environmental Quality Board (EQB).

NSPS is an air pollution control requirement set under the Clean Air Act. NSPS are applicable to certain categories of new air pollution sources.

EFFECTIVE DATE: This action was effective August 18, 1983.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch, Air & Waste Management Division, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–9627.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On May 4, 1983 the Chairman of the Puerto Rico Environmental Quality Board (EQB) requested that the EPA delegate to the Board the authority to implement and enforce certain additional source categories of NSPS. The following is a complete listing of NSPS delegated to the EQB. The source categories now being delegated by today's action are identified with an asterisk(*).

- D Fossil-Fuel Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators)
- Da Electric Utility Steam Generating Units for Which Construction Commerced After September 18, 1976
- E Incinerators
- F Portland Cement Plants
- G Nitric Acid Plants
- H Sulfuric Acid Plants
- I Asphalt Concrete Plants
- J Petroleum Refineries—(Process Gas Combustion, Catalytic Regenerators)
- J Petroleum Refineries—(Sulfur Recovery)
- K Storage Vessels for Petroleum Liquids Constructed After 6/11/73 prior to 5/19/78.
- Ka Storage Vessels for Petroleum Liquids Constructed After May 18, 1978
- L Secondary Lead Smelters

M Secondary Brass and Bronze Ingot Production Plants
N Iron and Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W Phosphate Fertilizer Industry: Triple Superphosphate Plants
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants: Electric Arc Furnaces
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
*EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Plants
*QQ Graphic Art Industry Publication Rotogravure Printing
*UU Asphalt Processing and Asphalt Roofing Manufacture

EPA'S Findings

EPA's determination that the delegation request should be approved is based on the Agency's review of the Puerto Rico Public Policy Environmental Act, Law No. 9 of 1970, 12 L.P.R.A. Sec. 1121, et seq. and on the Puerto Rico Regulation for the Control Atmospheric Pollution. EPA determined that such delegation is, therefore, appropriate and so notified the chairman of the EQB, in a letter dated July 20, 1983. This letter identified the conditions under which delegation would be approved. EQB subsequently accepted delegation in a letter dated August 16, 1983. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Consequences of EPA's Action

Effective August 18, 1983, all correspondence, reports and notifications required by the delegated NSPS should be submitted to the Offices of the Puerto Rico Environmental Quality Board located at P.O. Box 11488, Santurce, Puerto Rico, 00910, Attention: Air Quality Area Director.

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12991.

This Notice is issued under the authority of Section 111 of the Clean Air Act, is amended (42 U.S.C. Section 7411).

Dated: September 14, 1983.

Jacqueline E. Schafer,

Regional Administrator.

[FR Doc. 83-27653 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[AD-FRL-2443-5; GA-004]

Designation of Areas for Air Quality Planning Purposes; Georgia, Redefinition of SO_2 and TSP Attainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 6, 1983, the State of Georgia asked that the designation of particulate and sulfur dioxide attainment areas in 40 CFR 81.311 be changed from the "Rest of State" and "Statewide" to a listing of individual counties. This change, according to the State, will make it easier to track increment consumption under EPA's regulations for the prevention of significant deterioration of air quality. EPA is changing the description of sulfur oxide and particulate matter attainment areas in Georgia so that every county in the State is identified by name.

EFFECTIVE DATE: This action will be effective on December 12, 1983 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, SW., Atlanta, Georgia 30334

FOR FURTHER INFORMATION CONTACT: Mr. Barry Gilbert, Air Management Branch, EPA Region IV at the above address and telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On June 6, 1983, the State of Georgia asked that the designation of particulate sulfur dioxide attainment areas in 40 CFR 81.311 be changed from "Rest of State" and "Statewide" to a listing of individual counties. This change, according to the State, will make it easier to track increment consumption under EPA's regulations for the prevention of significant deterioration of air quality. The Agency finds this request to be consistent with the provisions of Section 107 of the Clean Air Act, and it is granted herewith.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

Under 5 U.S.C. Section 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.)

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

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: October 4, 1983.

William D. Ruckelshaus,

Administrator.

Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

In § 81.311, the TSP and SO_2 attainment status tables are revised to read as follows:

§ 81.311 Georgia.

GEORGIA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Appling County				X
Atkinson County				X

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Bacon County				X
Baker County				X
Baldwin County				X
Banks County				X
Barrow County				X
Bartow County				X
Ben Hill County				X
Berrien County				X
Bibb County				X
Bleckley County				X
Brantley County				X
Brooks County				X
Bryan County				X
Bulloch County				X
Burke County				X
Butts County				X
Calhoun County				X
Camden County				X
Candler County				X
Carroll County				X
Catoosa County				X
Charlton County				X
That portion of Chatham County within 0.25 mile of the West Lathrop and Augusta monitoring site in Savannah*.			X	
Rest of Chatham County				X
Chattahoochee County				X
Chattooga County				X
Cherokee County				X
Clarke County				X
cClay County				X
Clayton County				X
Clinch County				X
Cobb County				X
Coffee County				X
Colquitt County				X
Columbia County				X
Cook County				X
Coweta County				X
Crawford County				X
Crisp County				X
Dade County				X
Dawson County				X
Decatur County				X
DeKalb County				X
Dodge County				X
Dooly County				X
Dougherty County				X
Douglas County				X
Early County				X
Echols County				X
Effingham County				X
Elbert County				X
Emanuel County				X
Evans County				X
Fannin County				X
Fayette County				X
Floyd County				X
Forsyth County				X
Franklin County				X
Fulton County				X
Gilmer County				X
Glascock County				X
Glynn County				X
Gordon County				X
Grady County				X
Greene County				X
Gwinnett County				X
Habersham County				X
Hall County				X
Hancock County				X
Haralson County				X
Harris County				X
Hart County				X
Heard County				X
Henry County				X
Houston County				X
Irwin County				X
Jackson County				X
Jasper County				X
Jeff Davis County				X
Jefferson County				X
Jenkins County				X
Johnson County				X
Jones County				X
Lamar County				X
Lanier County				X
Laurens County				X
Lee County				X
Liberty County				X

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Lincoln County				X
Long County				X
Lowndes County				X
Lumpkin County				X
McDuffie County				X
McIntosh County				X
Macon County				X
Madison County				X
Marion County				X
Meriwether County				X
Miller County				X
Mitchell County				X
Monroe County				X
Montgomery County				X
Morgan County				X
Murray County				X
Muscogee County				X
Newton County				X
Oconee County				X
Oglethorpe County				X
Paulding County				X
Peach County				X
Pickens County				X
Pierce County				X
Pike County				X
Polk County				X
Paulaski County				X
Putnam County				X
Quitman County				X
Rabun County				X
Randolph County				X
Richmond County				X
Rockdale County				X
Schley County				X
Screven County				X
Seminole County				X
Spalding County				X
Stephens County				X
Stewart County				X
Sumter County				X
Talbot County				X
Taliaferro County				X
Tattnall County				X
Taylor County				X
Telfair County				X
Terrell County				X
Thomas County				X
Tift County				X
Toombs County				X
Towns County				X
Treutlen County				X
Troup County				X
Turner County				X
Twiggs County				X
Union County				X
Upson County				X
Walker County				X
Walton County				X
Ware County				X
Warren County				X
Washington County				X
Wayne County				X
Webster County				X
Wheeler County				X
White County				X
Whitfield County				X
Wilcox County				X
Wilkes County				X
Wilkinson County				X
Worth County				X
GEORGIA—SO_2				
Appling County				X
Atkinson County				X
Bacon County				X
Baker County				X
Baldwin County				X
Banks County				X
Barrow County				X
Bartow County				X
Ben Hill County				X
Berrien County				X
Bibb County				X
Bleckley County				X
Brantley County				X
Brooks County				X
Bryan County				X
Bulloch County				X
Burke County				X
Butts County				X

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Calhoun County				X
Camden County				X
Candler County				X
Carroll County				X
Catoosa County				X
Charlton County				X
Chatham County				X
Chattahoochee County				X
Chattooga County				X
Cherokee County				X
Clarke County				X
Clay County				X
Clayton County				X
Clinch County				X
Cobb County				X
Coffee County				X
Colquitt County				X
Columbia County				X
Cook County				X
Coweta County				X
Crawford County				X
Crisp County				X
Dade County				X
Dawson County				X
Decatur County				X
DeKalb County				X
Dodge County				X
Dooly County				X
Dougherty County				X
Douglas County				X
Early County				X
Echols County				X
Effingham County				X
Elbert County				X
Emanuel County				X
Evans County				X
Fannin County				X
Fayette County				X
Floyd County				X
Forsyth County				X
Franklin County				X
Fulton County				X
Gilmer County				X
Glascock County				X
Glynn County				X
Gordon County				X
Grady County				X
Greene County				X
Gwinnett County				X
Habersham County				X
Hall County				X
Hancock County				X
Haralson County				X
Harris County				X
Hart County				X
Heard County				X
Henry County				X
Houston County				X
Irwin County				X
Jackson County				X
Jasper County				X
Jeff Davis County				X
Jefferson County				X
Jenkins County				X
Johnson County				X
Jones County				X
Lamar County				X
Lanier County				X
Laurens County				X
Lee County				X
Liberty County				X
Lincoln County				X
Long County				X
Lowndes County				X
Lumpkin County				X
McDuffie County				X
McIntosh County				X
Macon County				X
Madison County				X
Marion County				X
Meriwether County				X
Miller County				X
Mitchell County				X
Monroe County				X
Montgomery County				X
Morgan County				X
Murray County				X
Muscogee County				X
Newton County				X
Oconee County				X
Oglethorpe County				X

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Paulding County				X
Peach County				X
Pickens County				X
Pierce County				X
Pike County				X
Polk County				X
Pulaski County				X
Putnam County				X
Quitman County				X
Rabun County				X
Randolph County				X
Richmond County				X
Rockdale County				X
Schley County				X
Screven County				X
Seminole County				X
Spalding County				X
Stephens County				X
Stewart County				X
Sumter County				X
Talbot County				X
Taliaferro County				X
Tattnall County				X
Taylor County				X
Telfair County				X
Terrell County				X
Thomas County				X
Tift County				X
Toombs County				X
Towns County				X
Treutlen County				X
Troup County				X
Turner County				X
Twiggs County				X
Union County				X
Upson County				X
Walker County				X
Walton County				X
Ware County				X
Warren County				X
Washington County				X
Wayne County				X
Webster County				X
Wheeler County				X
White County				X
Whitfield County				X
Wilcox County				X
Wilkes County				X
Wilkinson County				X
Worth County				X

* See FEDERAL REGISTER of September 23, 1981.

[FR Doc. 83-27650 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. I

Federal Acquisition Regulation; Federal Agencies' Ordering Procedure for FAR Training Manuals

AGENCY: General Services Administration, Federal Acquisition Regulation Project Office.

ACTION: Notice of Procedure for Federal Departments/Agencies to Order FAR Training Manuals—Digests and Cross Indexes.

SUMMARY: This notice sets forth the procedures for Federal departments/agencies to order copies of the initial printing of the FAR Digests and Cross Indexes from the Government Printing Office (GPO).

Six manuals have been prepared to introduce users to the Federal Acquisition Regulation (FAR) and to serve as training guides during the implementation period between September 19, 1983 when the FAR was published in the **Federal Register**, and April 1, 1984, when FAR becomes effective. These manuals are:

- Digest of the Federal Acquisition Regulation for Civil Agencies
- Cross Index—Federal Acquisition Regulation to Federal Procurement Regulations
- Cross Index—Federal Procurement Regulations to Federal Acquisition Regulation
- Digest of the Federal Acquisition Regualtion for the Department of Defense
- Cross Index—Federal Acquisition Regulation to Defense Acquisition Regulation
- Cross Index—Defense Acquisition Regulation to Federal Acquisition Regulation.

The first three books are considered civilian agency training manuals, and the second three are considered defense agency training manuals. Each set of three will be shrink wrapped as looseleaf books of approximately 300 pages per book.

ADDRESS: General Services Administration, Office of Federal Acquisition and Regulatory Policy, FAR Project, Room 4010, 18th & F Streets, NW., Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Rusty Olshine or Linda Klein, FAR Project Office, (202) 696-5180.

SUPPLEMENTARY INFORMATION: Departments/agencies wishing to order sets of the Digest and Cross Indexes are required to—

(1) Direct the department/agency printing officer to submit a printing and binding requisition (SF-1) to the Central Office, GPO not later than October 20, 1983; and

(2) Provide written verification to the FAR Project Office of the quantity ordered. A duplicate of the SF-1 will suffice.

The rider requisition must cite GPO jacket number 419-457 and GSA requisition number 4-00201, in addition to specifying quantity and delivery address. Each department/agency is limited to one delivery address. All production costs will be pro-rated to the Federal departments and agencies that participate. Bureaus, commissions, and regional offices of agencies must submit requisitions through their headquarters office only. GPO will bill each agency directly in accordance with existing procedures.

Each department/agency will determine the number of copies needed by that department/agency.

To aid in prompt adjustment to and training in the use of the FAR, it is recommended that each department/agency order a quantity similar to the number of copies ordered of the looseleaf version of the FAR.

Private sector companies, associations, and businesses may obtain copies of the FAR training manuals in sets of six books only by placing orders for required quantities with the Superintendent of Documents.

Government Printing Office (202) 783–3238.

Lawrence J. Rizzi,

Director, GSA FAR Project Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 83-24953 Filed 10-12-83; 8:45 am]

BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1162 and 1307

[Ex Parte No. MC-165 [1]]

Exemption of Motor Contract Carriers From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Rule related notice; notice of lifting of stay pending judicial review.

SUMMARY: By notice of September 8, 1983, 48 FR 40520, we informed the public of recent court actions, pending judicial review, staying our decisions granting industry-wide contract carrier tariff relief in Ex Parte No. MC–165 and granting individual relief in several other tariff exemption proceedings. We also explained in our notice how we intended to proceed in the future with respect to individual petitions requesting relief from the tariff filing requirements. By decision of September 28, 1983, the United States Court of Appeals for the District of Columbia Circuit vacated the stays, pending review, in the consolidated cases *Central & Southern Motor Freight Tariff Ass'n. Inc. v. USA and ICC,* and *The Eastern Central Motor Carriers Ass'n., Inc.,* v. *USA and ICC,* Docket Nos. 83–1581 and 83–1761. Accordingly, Ex Parte No. MC–165, *Exemption of Motor Contract Carriers From Tariff Filing Requirements,* 48 FR 24388 (June 1, 1983), is now effective and all motor contract carriers of property are exempted from the otherwise applicable tariff filing requirements. The Commission, however, will continue to process petitions filed by water and passenger contract carriers which seek relief from the tariff filing requirements on an individual basis. Those applicants are urged to consult the Commission's notice at 48 FR 40520 (September 8, 1983) for guidance as to how the Commission will handle their petitions.

FOR FURTHER INFORMATION CONTACT: Jane Morris (202) 275–6434

[1] This notice also pertains to No. 38749 (Sub-No. 1) et al., *UTF Carriers, Inc.—Petition for Exemption From Tariff Filing Requirements,* and No. 38895 et al., *International Transport, Inc.—Petition for Exemption From Tariff Filing Requirements.*

or

Howell I. Sporn (202) 275–7691.

Decided: October 5, 1983.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27798 Filed 10-12-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 30901-178]

Foreign Fishing, Groundfish of the Gulf of Alaska

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

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule to implement Amendment 11 of the Fishery Management plan for Groundfish of the Gulf of Alaska that was published on September 21, 1983, 48 FR 43044. The final rule erroneously omitted a revised table in the regulatory text under § 672.20 [*Amended*].

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, 907–586–7230.

The following correction is made in FR Doc. 83–25768 appearing on page 43050: Table 1 is inserted at the end of § 672.20 [*Amended*].

Dated: October 5, 1983.

Carmen J. Blondin,

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

TABLE 1. INITIAL (AS OF JANUARY 1, EACH YEAR) OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP

Species	Species Code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
Gulf of Alaska Groundfish Fishery:								
Pollock	701	Western[1]	57,000	5,775	25	5,750	11,400	39,825
		Central[1]	143,000	109,400	5,380	104,020	28,600	5,000
		Eastern[1]	16,600	2,215	695	1,520	3,320	11,065
		Total	216,600	117,390			43,320	55,890
Pacific cod	702	Western	16,560	1,680	840	1,040	3,312	11,568
		Central	33,540	6,050	4,680	1,370	6,708	20,782
		Eastern	9,900	2,070	1,480	590	1,980	5,850
		Total	60,000	10,000				38,000
Flounders	129	Western	10,400	700	100	600	2,080	7,620
		Central	14,700	1,120	300	820	2,940	10,640
		Eastern	8,400	1,360	900	460	1,680	5,360
		Total	33,500	3,180			6,700	23,620
Pacific ocean perch[2]	780	Western	2,700	345	25	320	540	1,815
		Central	7,900	1,255	295	960	1,580	5,065
		Eastern	875	500	300	200	175	200
		Total	11,475	2,100			2,295	7,080
Other rockfish[3]	849	Total	7,600	900	700	200	1,520	5,180
Sablefish[4]	703	Western	1,670	270	100	170	334	1,066
		Central	3,060	1,220	1,000	220	612	1,228
		West Yakutat District[1]	1,680	530	530	0	336	814
		East Yakutat District[1]	850	850	850	0	N/A	N/A
			xl	−1,135	−1,135	−1,135		
		Southeast Outside[1]	470	470	470	0	N/A	N/A
			xl	−1,435	−1,435	−1,435		
		Total	7,730	3,340			1,282	3,108
			xl	−8,980	−4,590			
Atka mackerel	207	Western	4,678	290	0	290	936	3,452
		Central	20,836	1,080	0	1,080	4,167	15,589
		Eastern	3,186	700	0	0	637	1,849
		Total	28,700	2,070			5,740	20,890
Squid	509	Total	5,000	150	0	150	1,000	3,850
Thornyhead rockfish	749	Total	3,750	6	6	0	750	2,994

TABLE 1. INITIAL (AS OF JANUARY 1, EACH YEAR) OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING TALFF), ALL IN METRIC TONS. OY=DAH+RESERVE+TALFF; DAH=DAP+JVP—Continued

Species	Species Code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
Other Species[5].	499	Total	75,100	4,200	1,360	2,840	15,020	55,880

[1] See figure 1 of section 672.20 for description of regulatory areas and districts.
[2] The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).
[3] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 4 above and *Sebastolobus* (thornyhead rockfish).
[4] Excludes values for the Southeast Inside District, which is not governed by these regulations.
[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The OY is equal to 20% of the target species OYs; the high end of the OY range for sablefish is used in its calculation.

[FR Doc. 83-27563 Filed 10-12-83; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 199
Thursday, October 13, 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 966

Tomatoes Grown in Florida; Proposed Amendment No. 2 To Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed amendment to handling regulation § 966.323 would prohibit the shipment of Florida tomatoes in used boxes and would eliminate the commingling of tomatoes of different sizes. These changes would promote orderly marketing by upgrading tomato packs and standardizing shipments.

DATE: Comments due October 28, 1983.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 475–3930.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in this regulation (7 CFR Part 966) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB #0581–0073.

This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. It is designed to promote orderly marketing of the Florida tomato crop for the benefit of producers and consumers, and would not substantially affect costs for the directly regulated handlers.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in desingated counties of Florida. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Because requirements under this program have changed infrequently, in September 1982 the committee recommended, and the Secretary approved, a regulation which continues in effect from marketing season to marketing season unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

At its annual meeting in Port St. Lucie on September 9, 1983, the committee unanimously recommended the regulation be amended this season.

The committee recommended that the shipment of tomatoes in used cartons be prohibited. Several shippers in Florida pack tomatoes in cartons previously used by another shipper. This is currently permitted if the words "USED BOX" and the second shipper's identity appear on the container's lid. Since the used containers generally are packed with lower quality tomatoes, the reputation of the original shipper suffers since his label remains on the carton. The proposed amendment would eliminate this problem.

The current handling regulation establishes four tomato size classifications and prohibits commingling the different sizes, except that the largest sizes—the 6 x 6 and the 5 x 6 and Larger—may be commingled. Containers with these commingled sizes, designated as "6 x 6 and Larger," contain almost exclusively tomatoes which fall into the 6 x 6 size category. Since this pack competes directly with the larger tomatoes, returns for the larger sizes are adversely affected by this practice. The committee recommended eliminating this commingling to increase tomato returns and to promote more uniformity of pack.

These proposed changes would standardize and upgrade the pack of tomatoes shipped from the production area, thereby promoting orderly marketing, and would tend to effectuate the declared policy of the act.

To maximize the benefits of orderly marketing, the proposed regulation should become effective as early as practicable in the marketing season which begins in mid-October. Interested persons were given an opportunity to comment on the proposal at the committee's open meeting on September 9, and tomato handlers have been apprised of the committee's recommendation. This proposal is similar to regulations in effect in past seasons. For these reasons, it is hereby determined that the period allowed for comments is sufficient.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, tomatoes, Florida.

PART 966—[AMENDED]

It is proposed that § 966.323 (47 FR 58213 and 48 FR 26757) be further amended by revising (a)(2) (ii) and (iii) and (a)(3) (ii) and (iii) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) *Grade, size, container and inspection requirements.*

* * * * *

(2) *Size.*

* * * * *

(ii) Tomatoes of designated sizes may not be commingled, and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are at least 2 $^{24}/_{32}$ inches in diameter, the containers shall be marked 5x6 and Larger.

* * * * *

(3) *Containers.*

* * * * *

(ii) Each container, or its lid, shall be marked to indicate the designated net weight and must show the name and address of the registered handler in letters at least one-fourth (¼) inch high.

(iii) The container in which the tomatoes are packed must be clean and bright in appearance without marks, stains, or other evidence of previous use

* * * * *

(Approved by the Office of Management and Budget under Control No. 0581–0073)

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

Dated: October 6, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-27791 Filed 10-12-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83–14]

Truck Size and Weight; Proposed Rule Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to proposed rule.

SUMMARY: This document corrects the proposed fulemaking for the final network of highways in the State of Illinois on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA) may operate. A portion of the designated routes for Illinois that appeared at page 41287 in the Federal Register of September 14, 1983, was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: Mr. Harry B. Skinner, Officer of Traffic Operations, (202) 426–1993, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, or Mr. Sheldon G. Strickland, Office of Highway Planning, (202) 426–0153, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

In FR Doc. 83–24908 appearing on page 41287 in the issue of Wednesday, September 14, 1983, correct the Illinois route designations to read as set forth below.

(23 U.S.C. 315; CFR 1.48(b))

Issued on: October 3, 1983.

William L. Mertz,

Director, Office of Program and Policy Planning, Federal Highway Administration.

Appendix—Other Designated Routes

Posted route No.	From—	To—
IL Toll Highways.	All Routes	
IL 5	I-80	US 30.
IL 6	I-74	IL 88.
US 20	Bsn. US 20 west of Rockford.	I-90.
US 36	North of Winchester	I-55.
US 50	East of Lawrenceville	Indiana St. Line.
US 51	Bsn. US 51 south of Decatur.	I-72.
US 51	IL 5	US 20.
IL 53	Army Trail Rd	IL 68.
IL 92	I-280	US 67.
IL 336	IL 57	US 24.
IL 394	Sauk Trail	I-80.
IL 1	IL 46	US 24.
IL 2	US 30	US 20.
IL 3	I-57	I-55.
IL 3	I-55	US 67.
IL 4	IL 13/127	I-55.
IL 5	I-74	I-80.
US 6	IL 7	I-80/94.
IL 7	IL 53	US 6.
IL 9	US 67	IL 41.
IL 9	IL 78	IL 121.
IL 10	I-55	US 51.
US 12	IL 120	Indiana St. Line.
IL 13	IL 15	Harrisburg.
US 14	Wisconsin St. Line	IL 50.
IL 14	US 51	Indiana St. Line.
IL 15	I-55	East junction IL 13.
IL 16	IL 267	US 67.
IL 16	I-55	IL 1.
IL 17	I-55	IL 114.
IL 18	US 51	IL 23.
US 20	Iowa St. Line	Bsn. US 20 west of Rockford.
US 20	US 51 east of Rockford	I-290.
Bus. US 20	IL 31	US 20 (east of Elgin).
IL 21	US 14	US 41.
IL 22	US 14	US 12.
IL 23	IL 19	Wisconsin St. Line.
US 24	Missouri St. Line	Indiana St. Line.
IL 26	IL 5	IL 2.
IL 26	IL 64	US 20.
IL 29	US 51	I-180.
US 30	Iowa St. Line	IL 5 west of Rock Falls.
US 30	IL 5 east of Rock Falls.	IL 53.
US 30	IL 43	IL 50.
US 30	IL 394	Indiana St. Line.
IL 31	Bsn. US 20	Wisconsin St. Line.
IL 33	I-57	IL 1.
US 34	Iowa St. Line	IL 88.
US 34	IL 71	I-294.
IL 34	I-57	IL 13.
US 36	Missouri St. Line	North of Winchester.
US 36	I-72 west of Decatur	Indiana St. Line.
IL 38	IL 47	I-294.
US 41	I-94 near Northbrook	I-94 near the Wisconsin St. Line.
IL 41	IL 9	IL 116.
IL 43	US 30	IL 60.
US 45	I-24	I-70.
US 45	I-80	North junction with IL 21.
US 45	IL 173	Wisconsin St. Line.
US 47	US 136	US 14.
IL 48	I-55	US 51.
US 50	Missouri St. Line	IL 3.
US 50	I-64	East of Lawrenceville.
IL 50	US 30	US 14.
US 51	IL 146	Bsn. US 51 south of Decatur.
US 51	I-72	I-74.
US 51	I-55	IL 5.
US 51	I-90	Wisconsin St. Line.
IL 53	I-80	Army Trail Rd.
US 54	Missouri St. Line	US 36.
I-55 Bsn. Loop.	Around Bloomington	
IL 56	IL 47	IL 5.
IL 57	IL 336	US 24.
IL 58	IL 59	US 45.
IL 59	I-55	IL 22.
IL 60	IL 43	US 41.
IL 64	IL 26	US 51.
IL 64	IL 23	IL 50.
US 67	Missouri St. Line	Iowa St. Line.
IL 68	US 12	I-94.
IL 71	I-80	US 34.
IL 72	IL 59	US 45.
IL 78	US 67	IL 125.
IL 78	IL 9	I-80.
IL 78	IL 5	IL 64.
IL 78	US 20	Wisconsin St. Line.
IL 83	US 30	I-94.
IL 83	US 45	US 12.
IL 88	US 34	IL 5.
IL 92	US 67	I-74.
IL 97	IL 125	IL 29.
IL 100	US 36	IL 104.
IL 104	US 24	US 67.
IL 108	US 267	IL 4.
IL 111	I-55	US 67.
IL 114	IL 17	Indiana St. Line.
IL 116	IL 41	I-474.
IL 116	I-74	I-55.
IL 117	I-74	IL 116.
IL 119	IL 1	Indiana St. Line.
IL 120	IL 31	IL 131.
IL 121	I-74	I-72.
IL 121	US 36	IL 16.
IL 125	US 67	IL 97.
IL 127	IL 13	IL 16.
IL 130	IL 1	IL 33.
US 136	US 24	IL 1.
IL 140	US 67	I-55.
IL 141	US 45	Indiana St. Line.
IL 146	Missouri St. Line	I-57.
IL 146	Elizabethtown	IL 1.
IL 149	IL 3	IL 13.
US 150	IL 1	Indiana St. Line.
IL 150	Missouri St. Line	IL 4.
IL 152	IL 13	US 51.
IL 159	IL 3	IL 15.
IL 171	IL 7	IL 83.
IL 173	IL 251	US 41.
IL 176	US 20	IL 47.
IL 251	US 20	IL 75.
IL 336	US 36	IL 57.
IL 394	Sauk Trail	IL 1.
Stoney Island Ave.	I-94	I-90.

NOTE.—The first 12 route descriptions (IL Toll highways through IL 394) are classified by current Illinois law as Class I and open to all commercial vehicles defined by the STAA of 1982. The remaining route descriptions are classified by Illinois as Class II and are restricted. Illinois law restricts Class II highways to a maximum allowable wheelbase of 55 feet for a tractor-semitrailer combination and 65 feet for a tractor-semitrailer-trailer combination. Specific comments are requested on the effect of the Illinois Law.

[FR Doc. 83-27654 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-22-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM83–6]

Rules of Practice; Contents of Formal Requests

AGENCY: Postal Rate Commission.

ACTION: Notice proposed rulemaking.

SUMMARY: The Postal Rate Commission proposes to amend § 3001.54 of its rules of practice. Section 3001.54 (Rule 54) describes the data the Postal Service must submit when it requests a change in postal rates or classifications. Unless the Postal Service satisfies certain conditions, the proposed rule requires the Postal Service to include in its formal request for changes in rates supplemental cost segment presentations consistent with methodological precedent in order to facilitate Commission decisions. Compliance with the proposed rule is excused if the Postal Service provides ninety days in advance notice of data

system changes which preclude application of methodological precedent and the Commission does not reject or modify the proposed changes.

DATES: Comments responding to this Notice must be filed on or before November 18, 1983.

ADDRESSES: Comments and correspondence relating to this Notice should be sent to Charles L. Clapp, Secretary of the Commission, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254–3880.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 2000 L Street, NW., Washington, D.C. 20268 (telephone : 202/254–3824.

SUPPLEMENTARY INFORMATION: In an October 25, 1982, Notice of Proposed Rulemaking the Commission invited comments addressing various proposed amendments to Section 54 of its rules of practice. Except for the proposed new section 54(h)(10), the proposed amendments to Rule 54 were adopted by the Commission in Order No. 478, January 21, 1983. In companion Order No. 479, the Commission instituted this Docket NO. RN83–6 to provide a vehicle to obtain further input on proposed section 54(h)(10).

As background, changes in data collection systems often result in the collection of new data and the combination, reconfiguration or elimination of data previously available. On occasion, this process may result in data critical to the allocation available to the Commission. Whether the changes to the data systems result in data of greater value for the purpose of cost allocation, over that previously provided, frequently is not ascertainable until it is reviewed by the Commission in the context of a section 3624 proceeding. However, by this point, current data comparable to that previously provided are no longer available and thus the Commission becomes incapable of applying methodological precedents.

In our initial proposed Rule 54(h)(10), we proposed remedying this problem by requiring the Service to collect and provide, at least as supplemental data, whatever information is necessary for the Commission to follow its methodological precedents.[1] This information would be required regardless of whether the Postal Service sponsored or supported it for the purpose of attribution and/or assigning costs.

The Postal Service strenuously opposed the original proposal claiming that it would require prohibitively expensive parallel costing systems. One system would be designed to "accommodate the changes, adjustments and refinements in postal operations and accounting which naturally evolve over time" and another would be "based on the costing procedures which the Commission used in its most recent section 3624 recommended decision * * * regardless of whether the system accurately reflects current postal operations."[2] The Service estimates that duplicate data systems may cost $60 million or more. Additionally, the Service argues that the initial proposed rule infringes upon the authority of postal management, because 39 U.S.C. 401 grants the Service power to determine and keep its own system of accounts.[3]

To support its arguments, the Postal Service filed prepared testimony of witnesses Alepa and Alenier. Witness Alepa's testimony provides a comprehensive description of the Service's data systems. More importantly he attempts to explain the problems that may arise if the Commission has to be advised in advance of proposed changes in the Service's data systems. These problems will be discussed *infra*.

Witness Alenier illustrates the difficulties that might be encountered if the initially proposed rule were adopted under three different circumstances. First, he discusses the situation when the Commission uses one approach to develop costs, and thus rates, while it recommends the development of another approach for the next proceeding. Second, he discusses the problems that may arise even when the Commission adopts the Postal Service's proposal. And third, he discusses situations where he is unclear what the Commission procedents are that the Postal Service is expected to follow.

While the illustrations discussed by witness Alenier are resolvable, for the most part, during the proceeding stage under the new proposed rule, it is nevertheless worthwhile to briefly describe them in order to have an insight into the background of our revised proposals. One of the three illustrations presented by witness Alenier, pertaining to the situation where the Commission recommends one approach while adopting another, involves Cost Segment 10—Rural Carriers. In Docket No. 80–1, the Postal Service, using a study entitled the Rural Carrier Study, developed cost attributions based on pay. Basing cost attributions on pay, the Postal Service attributed 35 percent of the costs of heavy duty rural carriers. The Commission did not adopt this approach. The Commission relied on the Docket No. MC76–5 Current Cost Study to employ a functional methodology similiar to that used for city carriers. The Commission's approach resulted in attributing 48 percent of heavy duty rural carrier costs. In connection with its recommendations, the Commission also urged additional data collection efforts relating to coverage and pieces per delivery. The fruits of this effort were to be used in future proceedings. Witness Alenier indicates that to adopt the Commission's suggestions the Postal Service would have to implement a new data collection system similiar to the one used for city delivery carriers. Continuing, witness Alenier notes that the Postal Service is conducting new studies which are intended to form the basis of its costing presentation in the next rate case relating to rural carrier costs. According to witness Alenier, implementation of the Commission's proposal could thus require three distinct costing systems: (1) One to provide the data relied upon by the Commission in Docket No. R80–1, (2) another to satisfy the Commission's additional data request, and (3) a third system to develop the data the Service proposes to use in the next case.

Witness Alenier uses Cost Segment 3, Supervisors and Technical Personnel to illustrate the problems which may arise even when the Commission adopts the Service's proposals. The base year in Docket No. R80–1 was FY 1979. Based on a FY 1979 base year, the Postal Service divided the costs for the component Other Supervisors and Technicians into five subcomponents.

[1] In our October 25, 1982 notice, at p. 9, n. 1, we indicated that such precedent would normally be established in omnibus section 3622 rate cases but could also be established in limited rate and classification cases. For purposes of the modified proposals presented herein, we have assumed that precendent arises from omnibus rate cases. To the extent recedent arises otherwise, we will, as appropriate, take cognizance thereof in the relevant opinions and recommended decisions.

[2] Motion for a Hearing and Preliminary Comments of the United Postal Service, November 29, 1982, at 2.

[3] The Commission's proposal does not conflict with 39 U.S.C. 401 because it does not constrain postal management's discretion to determine how its financial accounts used for management purposes will be structured. Nor does it prohibit postal management from structuring its cost accounts for ratemaking purposes as it prefers. It does potentially require the Postal Service to make certain cost data available where the availability of such data is necessary to implement approved methods of identifying cost causality. Such authority is a necessary corollary of the Commission's role, defined in National Association of Greeting Card Publisher's v. USPS, 51 U.S.L.W. 4877, 4881 (NAGCP) as the body primarily responsible for determining what methods of identifying cost causality shall be employed in ratemaking.

The Commission adopted costs based on these five subcomponents using data collected in the In-Office Cost System. However by FY 1982, the Postal Service had revised its data collection forms to use "job title information recorded for In-Office Cost System observations of supervisors to determine the levels of subcomponent costs." Testimony of witness Alenier at 43. To provide the data which were available in FY 1979 would require the Postal Service to use forms and cost aggregations or disaggregations which have not been used since FY 1979.

Finally, witness Alenier refers to Cost Segment 1—Postmasters—to present an example wherein it is unclear as to what constitutes Commission precedent. In Docket No. R80–1, the Commission adopted the Service's costing methodology for this segment but indicated that another party's alternative approach providing greater disaggregation may "prove useful in future proceedings."[4] Which approach constitutes Commission precedent is unclear, according to witness Alenier.

We share the Postal Service's concern that unnecessary duplication of activities in the Service's costing systems is a waste of resources. On the other hand, we hope that the Postal Service appreciates that unilateral changes in data systems potentially have the effect of emasculating the Commission's ability to fulfill its mandate of optimizing cost allocations to insure that each class of mail bears it own identifiable costs. Only recently the Supreme Court implored the Postal Service "to aid the Commission in fulfilling the 3622(b)(5) requirement that all costs capable of being considered the result of providing a particular class of service are identified and borne by that class."[5]

Instead of of proposing an ongoing data collection requirement to provide data consistent with costing methodological precedents, the modified proposed rule is essentially a notice provision coupled with recognition of the Postal Service's obligation to collect and have available data necessary for the Commission to fulfill its responsibility to attribute costs to classes of mail. The proposed rule requires ninety days advance notice of changes in data systems which would have the effect of preventing the Commission from continuing to use prior costing methodology precedents. The Commission anticipates that normally such changes will not be controversi and will be routinely implemented without Commission action. However, when the Commission believes that the proposed change threatens the Commission's ability to identify causal connections between a particular service and particular costs consistent with previously established precedents, the Commission may conduct proceedings to evaluate the proposed changes.[6] Depending upon the circumstances, the proceedings may range from notice and comment proceedings to more structured hearings with evidentiary submissions and possibly cross-examination of witnesses. At the conclusion of the proceedings, the Commission may approve, reject or recommend modification to the proposed changes and the attendant unavailability of data critical to the Commission following its costing precedents.

Although the proposed rule is drafted in the form of a waiver of the Rule 54 filing requirements, the effect of a Commission rejection of the proposed changes is to require the Postal Service to collect and provide as supplemental data, information consistent with the costing methodology employed by the Commission in its most recent omnibus rate case. Alternatively the Commission may authorize the Postal Service to partially dispense with data previously provided while requiring the provision of other data which otherwise would become unavailable because of the proposed change. Neither the rejection nor modification options are intended to preclude the Postal Service from implementing its data change proposals insofar as the changes involve collection of additional data which do not impinge upon the availability of data previously relied upon by the Commission. The sole purpose of the rejection or modification options is to ensure that critical data previously availabe remain available for future proceedings.

Our proposed rule allows the Postal Service to routinely implement system changes with a minimum of disruption. Commenting in response to a notice of inquiry, the Postal Service expresses concern that requiring advance notice of system changes is untenable because "of the large number of changes made every year, as well as the critical nature of the data systems involved." We believe that our requirement for ninety days advance notice of changes does not create an undue burden on the Postal Service. As the Service itself notes there is lead time in which changes are formulated, training takes place and forms revised to effectuate a proposed change.[7]

During this period of evolution [8] it is not burdensome to file a notice with the Commission of anticipated changes. We expect that most changes will be routinely implemented without the Commission seeking to review the changes. With regard to those changes requiring Commission review because they threaten the Commission's ability to fulfill its mandate, the Commission will attempt to act expeditiously during all stages of the review process thereby mitigating any disruption of the Postal Service's data collecting and processing procedures. However it should be noted that pursuant to the proposed rule, if the Commission issues a notice initiating a proceeding, said action should preclude the Postal Service from modifying its data systems in such a way as to cause data to become unavailable until the Commission approves, rejects or modifies the Postal Service's proposal.

As indicated, the proposed rule contemplates 90 days advance notice of changes to allow sufficient time for analysis and, if necessary, Commission action on the proposed changes. If the Commission decides to institute a proceeding, it intends to act expeditiously. Although experience will ultimately determine what time frames are most appropriate, we contemplate giving notice of proceedings within 30 days of receipt of a notice of change in data systems. Assuming cooperation from all concerned we will strive to issue an order of approval, rejection or modification by the end of the 90 days advance notice period. By this type of prompt action the Commission will be able to avoid the difficulties which pervaded the long-term studies in Docket No. MC76–5. *See* Comments on the Notice of Inquiry at 8.

Finally, we note that there have been many changes to the Postal Service data systems since Docket No. R80–1. *See* generally testimony of witness Alenier. At this stage, it is possible that the system is not producing the data that would allow the Commission to replicate methodological precedents. Rather than attempt to reconcile the existing data system with our recommendations in Docket No. R80–1, we believe that this rule should take effect with the next omnibus rate case. Within three months after the Commission issues its Opinion in the next omnibus rate case, the Postal

[4] PRC Op. R80–1, App. J, p. 10.
[5] NAGCP at 4881.

[6] Prior to initiating a proceeding the proposed rule permits the Commission to request further information, solicit comments, hold technical conferences etc., to obtain a thorough understanding of the data system changes.

[7] Initial Comments on the Notice of Inquiry at 4.
[8] *See* testimony of witness Alepa at 37–49

Service should file a report identifying any areas in which its existing data systems do not generate the data required to implement the methodologies approved in the Commission's Opinion. Thereafter, as necessary, the Postal Service should provide notice of changes in its data systems.[9]

Impact of proposed changes. Pursuant to Executive Order 12291, the Commission finds that the proposed rule changes do not constitute a "major rule." The changes deal with procedural matters and it is not anticipated that they could result in an appreciable change in the costs of participating in these cases. Nor will the changes have any adverse effects on competition, employment or the other factors listed in E.O. 12291.

The above analysis that the proposed rule changes do not constitute a major rule for purposes of E.O. 12291, applies with equal force to the Regulatory Flexibility Act. However, we would welcome comments as to whether the rule could have a significant economic impact on a substantial number of small entities, as well as suggestions as to how to minimize any such impact.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure.

We propose to amend § 3001.54 of our rules of practice by redesignating current paragraphs (h) (10), (11) and (12) as paragraphs (h) (11), (12) and (13), respectively, and adding new paragraph (h)(10) to the category of information that must accompany the Postal Service's initial cost presentation, to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(h) * * *

(10)(i) Except to the extent waivers are obtained pursuant to paragraphs (h)(10) (ii) and (iii), every formal request shall include, either as primary or supplemental data, all information necessary to enable the Commission to attribute and assign segment and component costs to classes and subclasses of mail by the method used by the Commission to attribute and assign such costs in the most recent omnibus rate case.

(ii) As early as possible, and in any case, no later than 90 days prior to implementing changes in data collection, data processing, or manner of data presentation that would preclude the Commission from attributing and assigning cost segments consistent with the methods used by the Commission to attribute and assign costs in the most recent omnibus rate case, the Postal Service shall file with the Commission a notice describing in detail its proposed changes. Timely filing of this notice will conditionally waive the requirement that the Postal Service file the information described in paragraph 54(h)(10)(i). The Commission upon receipt of the notice may request further information, solicit comments, hold technical conferences and take other steps for the purpose of obtaining a thorough understanding of the changes the Postal Service proposes.

(iii) Within 90 days of receipt of notice of proposed changes, the Commission, at its discretion, may initiate proceedings for the purpose of reviewing the proposed changes. Notice of said proceeding will be published in the **Federal Register.** Initiation of such a proceeding will suspend the effectiveness of the conditional waiver excusing the Postal Service from supplying the information required in paragraph 54(h)(10)(i). At the conclusion of this proceeding, the Commission may approve, reject or recommend modifications to the proposed changes. Rejection of the proposed changes will result in withdrawal of the conditional waiver granted in paragraph 54(h)(10)(ii). Modification of the proposed change will waive the requirement that the Postal Service file the data described in paragraph 54(h)(10)(i) to the extent such waiver is consistent with the recommended modifications.

Charles L. Clapp,

Secretary.

[FR Doc. 83-27900 Filed 10-12-83; 8:45 am]

BILLING CODE 7715-01-M

[9] It is possible that during the pendancy of a filing the Service may implement changes which are not accounted for in the Commission's opinion and recommended decision. Providing a report within three months of the issuance of a Commission opinion reconciling the methodological precedents adopted by the Commission and the existing data systems will avoid any problems which may arise because of the hiatus.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-FRL-2450-7]

Approval and Promulgation of Implementation Plans; Piti Nonattainment Area Plan, Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking

SUMMARY: Revisions to the Guam State Implementation Plan (SIP) were submitted to EPA by the Governor's designee. These revisions consist of a Control Strategy and addenda which together comprise the sulfur dioxide (SO_2) Nonattainment Area Plan (NAP) for the Piti Nonattainment Area in Guam. This notice proposes to approve the NAP since it meets requirements of Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas."

DATES: Comments must be received on or before November 14, 1983.

ADDRESSES: Send any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

ATTN: State Implementation Plan Section (A-2-3), Air Programs Branch, Air Management Division.

Copies of the revisions and EPA's associated Technical Support Document are available for public inspection during normal business hours at the EPA Regional 9 Office at the above address and at the following location: Guam Environmental Protection Agency, Harmon Plaza, Agana, Guam 96910.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, (415) 974-7641.

SUPPLEMENTARY INFORMATION: On June 30, 1982 the Guam Environmental Protection Agency (GEPA) submitted to EPA a Control Strategy and addenda which together constitute the SO_2 NAP for the Piti Nonattainment Area. The Strategy demonstrates attainment of the ambient SO_2 standard by raising the stack heights at the Piti Power Plant and the Inductance Barge to prevent plume downwash and through sulfur content in fuel restrictions.

Today's notice proposes to approve the NAP because it demonstrates attainment of the SO_2 standards. Specifically, EPA proposes to approve the following:

*"Territory of Guam NAP for SO_2," (consisting of the narrative or Control Strategy portion of the NAP);

*Addendum B, "Preliminary Results of SO_2 Dispersion Modeling"

*"Official Report of Public Hearing"

EPA is taking no action on the following portions of the NAP for the reasons indicated:

*Addendum A, "Redesignation of Guam's Air Quality Control Region for Sulfur Dioxide," (addressed in a previous **Federal Register** (FR) notice);

*Addendum C, Chapter 13, "Control of Sulfur Dioxide Emission," (addressed in previous FR notices);

*Addendum D, "Compliance Order Preamble," (addressed in a previous FR notice);

*Addendum E, "Delayed Compliance Order," (inappropriate for inclusion in the SIP under Section 110; addressed in a previous FR notice under Section 113);

*Addendum F, Chapter 13, "Permits," (will be addressed in a future FR notice).

For a detailed description of the individual items in the addenda, including **Federal Register** citations, please refer to the Technical Support Document.

The three major sources of SO_2 emissions within the Piti Nonattainment Area are the Cabras Power Plant, the Piti Power Plant, and a Power Inductance Barge. On May 12, 1981, EPA approved as part of Guam's State Implementation Plan (SIP) Rule 13.1 and a compliance order submitted as an addendum to Rule 13.1. Rule 13.1 applies to these three sources and prohibits the use of fuel with a sulfur content greater than 3.14% at any time or greater than 2.84% on average over a twelve month period. The compliance order further controls emissions from the Power Inductance Barge by requiring the use of 1.33% sulfur fuel until the height of the Barge's stack is raised by 21 feet.

Modeling for the Piti and Cabras Power Plants using stack heights consistent with good engineering practice indicates that under actual worst case meterological conditions, with both power plants operating under full load using 3.14% sulfur fuel, emissions are not projected to cause exceedances of the SO_2 standards. In addition to its percent sulfur requirement, Rule 13.1 requires stacks to be of sufficient height to prevent aerodynamic downwash and provide for good dispersion of emissions. The NAP states that construction of a second tall stack at the Piti Power Plant was completed in August 1981. This further reduces ground level concentrations.

Since the submittal of the NAP, the stack height of the Barge, which has not been in operation for several years, has been raised 21 feet in conformance with the compliance order. EPA has also determined that the area surrounding the Barge is not considered to be ambient air. The Barge is harbored at a U.S. Naval Reservation (Polaris Point) designated for dockage of Polaris Nuclear Submarines. The waters around the Barge are periodically patrolled and land access to the Barge area can only be obtained by way of a road which is guarded by U.S. Marines. Therefore, exceedances of the NAAQS in this area need not be considered in this SIP revision.

In summary, the SO_2 NAP has been evaluated for conformance with Part D of the Clean Air Act and found to be approvable because it provides for attainment of the SO_2 standards. Therefore, today's notice proposes to approve the SO_2 NAP for the Piti Nonattainment Area and incorporate it into the Guam State Implementation Plan (SIP). Guam's new source review rules, submitted to EPA on January 6, 1982, will be acted on in a separate notice. Until final approval of both, the construction ban on major new or modified sources will continue in the Piti area.

For EPA's detailed evaluation of the NAP, please refer to the Technical Support Document. The Technical Support Document provides background information on nonattainment area plans, summarizes the Control Strategy and addenda, and compares the Piti NAP with the applicable Clean Air Act requirements.

The Administrator has certified that SIP approvals do not have a significant impact on a substantial number of small entities. (See 46 FR 8709). The Office of Management and Budget has exempted this revision from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

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

(Secs. 110, 171 to 178 and 301(a), Clean Air Act as amended (42 U.S.C. 7410, 7501 to 7508, and 7601(a))

Dated: December 30, 1982.

Sonia F. Crow,
Regional Administrator.

[FR Doc. 83-27783 Filed 10-12-83; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 81

[AL-006; TN-011; AD FRL 2450-5]

Approval and Promulgation of Implementation Plans Designation of Areas for Air Quality Planning Purposes; Alabama and Tennessee; Redesignation of TSP, SO_2, and Ozone Areas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve certain requests by Alabama and Tennessee to redesignate a number of counties for particulates (TSP), sulfur dioxide (SO_2), and ozone (O_3). Other redesignation requests made by these States cannot be proposed for approval because they are not adequately supported by data or other demonstration required by EPA redesignation policy. The public is invited to submit written comments on the proposed redesignations.

DATE: Comments must be received on or before November 14, 1983 to be considered.

ADDRESS: Written comments should be addressed to EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the material submitted by Tennessee and Alabama in support of the redesignation may be examined during normal business hours at the following locations:

Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365;

Air Program, Alabama Department of Environmental Management, 645 South McDonough Street, Montgomery, Alabama 36130;

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Archie Lee (Alabama redesignations) or Ray Gregory (Tennessee redesignations) or the EPA Region IV Air Management Branch, at the Atlanta address above, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act provides for changes in attainment status designation by the Administrator.

Summary of EPA policy. Current EPA policy on the redesignation of nonattainment areas provides a threefold approach; a state's request for such a change in attainment status designation must be supported by (A) the most recent twelve consecutive quarters of quality-assured, representative ambient air quality data (ozone), (B) the most recent eight quarters of quality-assured, representative ambient air quality data, plus evidence that a control strategy approved by EPA as part of the SIP is being implemented, or (C) the most recent four quarters of quality-assured, representative ambient air quality data, and a demonstration (including an acceptable state of the art modeling analysis) that actual, enforceable emission reductions are responsible for the recent air quality improvement.

Under current EPA policy on the redesignation of unclassified areas, states must submit (1) the most recent four quarters of quality-assured, representative ambient air quality data or (2) in lieu of monitoring data for rural areas, a demonstration that emission densities are equal to or less than other rural areas where monitoring data indicates attainment (EPA also requires the states to examine the impact of rural emissions on urban areas). In today's proposal, four of these bases for redesignation are applicable; the four will be identified with one of the following signs:

(B) = 8 quarters of data plus implementation of approved SIP
(C) = 4 quarters of data plus a demonstration of emission reductions
(1) = 4 quarters of data
(2) = emission densities comparable to rural attainment areas.

Alabama redesignations. On January 3, 1983, the Alabama Department of Environmental Management (DEM) asked EPA to change the attainment status of three counties from primary nonattainment to attainment: Mobile County (TSP), Jackson County (SO_2), and Etowah County (O_3). On the basis of the information submitted, EPA cannot consider redesignating Etowah County; the State's submittal, which included four quarters of monitoring data indicating no violations, did not adquately demonstrate commensurate emission reductions. EPA proposes to redesignate Mobile and Jackson Counties attainment on basis (C).

On December 6, 1982, DEM asked EPA to redesignate a number of counties in the southern part of the State attainment for ozone, including Baldwin, Clarke, Mobile, Russell, and Washington. EPA cannot consider redesignating these five counties as the State requested because the monitoring data were not sufficiently complete (less than 75% recovery) to be representative. On basis (1), however, it is proposed to change the attainment status of the following counties from unclassifiable to attainment for ozone: Barbour, Bullock, Butler, Chambers, Chilton, Choctaw, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Geneva, Hale, Henry, Houston, Lee, Macon, Marengo, Perry, Pickens, Pike, Sumter, Tallapoosa, and Wilcox.

Tennessee redesignations. Tennessee submitted a petition requesting redesignation of certain nonattainment and unclassified areas on December 9, 1982. After EPA had commented on the requests, Tennessee requested reconsideration of certain areas and supplied supplemental information on January 21, 1983. In addition to requesting the changes in attainment status designation, Tennessee has revised its State Implementation Plan (SIP), changing the list which identifies the nonattainment areas in the State; these changes were submitted to EPA on January 19, 20, and 21, February 9, March 4, 14, and 22, April 6, and June 1, 1983, as SIP revisions.

EPA cannot consider the following changes requested by Tennessee for the reasons stated: Shelby County, from nonattainment to attainment for ozone, because the calculated number of expected exceedances is greater than 1.0; Fayette and Tipton Counties, from unclassified to attainment for ozone, because they are in the same air shed as Shelby County and influenced by its urban impact; Bradley County, from nonattainment to unclassified for ozone, because no air quality data or emission reduction summary was available with which to determine the status of this county; and a portion of La Follette, from primary and secondary nonattainment for TSP to secondary nonattainment, because although four quarters of air quality data were submitted, the State was unable to identify commensurate emission reductions.

On basis B, it is proposed to redesignate the following areas from TSP nonattainment, primary and secondary, to secondary nonattainment only: portions of Davidson and Hamilton Counties; and on basis C, it is proposed to redesignate the following areas from TSP nonattainment, primary and secondary, to attainment for all TSP standards: portions of Campbell, Sullivan, and Shelby Counties.

On basis B, it is proposed to redesignate the following areas from SO_2 nonattainment, primary and secondary: Portion of Benton and Humphreys Counties to secondary nonattainment only, and a portion of Polk County to attainment for all SO_2 standards. The reader should note that the SO_2 table currently published in the Code of Federal Regulations (40 CFR 81.343) is in error.

On basis 2, it is proposed to change the designation of the following areas from unclassifiable for ozone to attainment: Grainger County, Jefferson County, and the unclassifiable areas in AQCR's 007 (Tennessee portion), 207, 208, and 209 (excepting Fayette and Tipton Counties). On basis C, it is proposed to redesignate the following ozone nonattainment areas to attainment: Knox County, Maury County, Sullivan County, and the Nashville area (Davidson, Rutherford, Sumner, Williamson, and Wilson Counties).

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, Intergovernmental relations, National parks, Wilderness areas, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate mattrer, Carbon monoxide, Hydrocarbons.

(Sec. 107 and 110 of the Clean Air Act (42 U.S.C. 7407 and 7410))

Dated: August 17, 1983.

John A. Little,

Acting Regional Administrator.

[FR Doc. 83-27785 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-5-FRL 2447-6]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise the air quality attainment status designations, at 40 CFR 81.350, of seven areas in the State of Wisconsin. The areas, pollutants, and proposed revisions are as follows:

1. Sub-city area of Beloit, Total Suspended Particulates (TSP), from "does not meet primary standards" to "does not meet secondary standards";

2. Sub-city area of Madison, Sulfur Dioxide (SO_2) from "does not meet primary standards" to "better than national standards";

3. Corporate limits of Brokaw, SO_2, from "does not meet primary and secondary standards" to "better than national standards"; and,

4. Vilas, Brown, Columbia, and Dane Counties, Ozone, from "does not meet primary standards" to "cannot be classified or better than national standards".

These proposed revisions are based on a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate these areas and on the supporting data submitted by the

WDNR. [Under the Clean Air Act (Act), attainment status designations can be changed if sufficient data are available to warrant such change]. The intent of this notice is to dicuss the results of EPA's review of the WDNR's redesignations request and to solicit public comment on the revisions and EPA's proposed action.

ADDRESSES: Copies of the redesignation request, technical support documents, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604;

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster Street, Madison, Wisconsin 53707.

Comments on this proposed rule should be addressed to (please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sharon Reinders, Air Prgrams Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6034.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

EPA's criteria for section 107 designations are summarized in an April 21, 1983, policy memorandum, "Section 107 Designation Policy Summary", from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards. In general, all available information relative to the attainment status of the area should be reviewed. These data should include the most recent eight consecutive quarters of quality assured, representative ambient air quality data. Supplemental information including the available air quality modeling, emissions data, evidence upon implemented control strategy, and other pertinent factors should be considered to determine if the monitoring data accurately characterize the worst case air quality in the area. Information submitted to support attainment redesignations must adequately and accurately reflect long term operating rates and economic conditions. In special situations, an attainment designation can be made using only the most recent four quarters of ambient air quality data if an acceptable state-of-the-art modeling analysis is provided showing that the State Implementation Plan (SIP) strategy is sound and that actual, enforceable emission reductions are responsible for the air quality improvement.

EPA policy on ozone attainment designations is given in *Guideline for the Interpretation of Ozone Air Quality Standards* (EPA Report # EPA–450/4–79–003, January 1979). This document indicates that attainment designations should be based on the 3 most recent available years of monitoring data for which specified completeness criteria are met. This document also delineates a procedure for calculating the expected average number of days per year the ozone standard will be exceeded, based on the number of recorded exceedances and adjusted to reflect the possibility of exceedances occurring on unmonitored days. An area may be designated attainment for ozone only if all monitors in the area are showing 1.0 or fewer expected exceedances.

On February 10, 1983, and March 14, 1983, the WDNR submitted: (1) Requests to EPA to revise the Section 107 atttainment status designations for the seven areas listed in the Summary portion of this notice; and (2) Technical Support Documents with summaries of recent ambient air quality monitoring data collected in the State. On April 18, 1983, WDNR submitted additional ambient monitoring data and on May 13, 1983, WDNR submitted certifications of compliance with the emission limitations contained in the SIP for certain sources in these areas. EPA is today summarizing the State's submittals. A discussion of the proposed rulemaking action is presented below for each geographic area.

EPA finds that a redesignation of these areas is approvable at this time. The reader is referred to the State submittals of February 10, and March 14, 1983; and EPA's technical support document for each area for further details on the proposed approval of the State's request.

Beloit—TSP

Based on monitored violations of the TSP NAAQS during the period of 1975–1977, portions of the City of Beloit, located in Rock County, were designated as primary and secondary nonattainment areas for TSP. In accordance with the Part D requirements of the Act, the State of Wisconsin revised its SIP to demonstrate attainment of the primary TSP NAAQS by December 31, 1982. EPA published final approval of Wisconsin's SIP for this area in the Federal Register on March 8, 1983 (47 FR 9860).

On March 14, 1983, WDNR requested that EPA revise the nonattainment designation for the City of Beloit, from primary nonattainment to secondary nonattainment of the TSP NAAQS and to reduce the size of this secondary nonattainment area. To support its request, WDNR submitted a Technical Support Document with summaries of the TSP ambient air monitoring data collected in Beloit during 1980, 1981, and 1982. These data show that no violations of the primary TSP NAAQS have occurred at any of the monitoring sites within the last eight quarters. These data show that two violations of the secondary TSP NAAQS were monitored in 1981. On May 13, 1983, WDNR submitted a status report on the compliance of affected sources with the reasonably available control technology (RACT) particulate emission limits contained in the SIP.

The results of EPA's review of the State's supporting modeling data, using the RACT emission limits, indicate that the TSP emission reductions due to RACT requirements are responsible for the improvement in air quality. The modeling further confirms the extent of the area of monitored nonattainment of the secondary TSP NAAQS.

Thus, EPA has determined that all available data support a redesignation of the City of Beloit from primary nonattainment to secondary nonattainment of the TSP NAAQS and a reduction in the size of the secondary nonattainment area. The proposed boundaries of the secondary nonattainment area are as follows:

North Boundary: Portland Avenue east from Fourth Street to intersection with Woodward Avenue, Woodward Avenue east to Park Avenue.

East Boundary: Park Avenue south from Woodward Avenue to Broad Street.

South Boundary: Broad Street west from Park Avenue to Fourth Street.

West Boundary: Fourth Street north from Broad Street to Portland Avenue.

The remainder of Rock County retains the current designation of attainment.

Madison—SO_2

Based on monitored violations of the SO_2 NAAQS in 1977, a sub-city area of Madison, located in Dane County, was designated as a primary nonattainment area for SO_2. As required by Part D of the Act, Wisconsin developed a strategy to attain the SO_2 standard in Madison

by December 31, 1982. EPA approved this plan as a revision to the Wisconsin SIP in a final rulemaking action on April 9, 1981 (46 FR 21165) and April 13, 1982 (47 FR 15783).

On February 10, 1983, the WDNR requested EPA to redesignate the City of Madison from primary nonattainment to attainment of the SO_2 NAAQS. Along with its request, WDNR submitted a Technical Support Document which presents summaries of ambient air quality monitoring data collected by the State in the Madison area from 1977 through 1982. These data show that there were no violations of the ambient SO_2 standards since 1978. In addition, WDNR certified the compliance of all sources in Madison with the required emission limitations contained in the SIP.

Therefore, EPA is proposing to approve the State's request to redesignate the City of Madison from primary nonattainment to attainment of the SO_2 NAAQS.

Corporate Limits of Brokaw—SO_2

On March 14, 1983, the WDNR requested EPA to redesignate the corporate limits of Brokaw, located in Marathon County, from nonattainment of the primary and secondary SO_2 NAAQS to attainment. To support its request, Wisconsin submitted summaries of the SO_2 monitoring data collected in Brokaw during the period of 1980, 1981, and 1982. These data show that no violations have occurred in 1982 although violations were recorded in 1980 and 1981. Therefore, no violations of the SO_2 NAAQS have been monitored at any of the sites within the past four quarters.

Wisconsin has recently revised its strategy to attain the SO_2 NAAQS in this area and submitted the revision to EPA on February 17, 1983. This revision changes the RACT emission limitation placed on Wausau Papers, Inc. in Brokaw and provides for attainment of the NAAQS by December 31, 1982. This source has been certified by the State to be in compliance with the revised emission limits. Available modeling data which was submitted by the State to support its SIP revision, indicates that the SO_2 emission reductions required by the SIP revision are responsible for the improvement in air quality. The modeling predicts no violations of the SO_2 standards. Therefore, EPA proposed to approve the State's revised emission limits for Wausau Papers, Inc. as a revision to the SO_2 portion of the SIP on August 17, 1983, 48 FR 37232.

In today's rulemaking action, EPA is proposing to approve the State's request to redesignate the area to attainment based on the monitoring, modeling, and compliance data submitted by the State.

If, after reveiw of public comment, EPA finally approves the revised emission limitation for Wausau Papers, Inc., then EPA will take final action to redesignate the area to attainment. If EPA disapproves the reivsed emission limitation for Wausau Papers, Inc., then the current designation of nonattainment will remain for the area.

Vilas County—Ozone

Vilas County is a rural area located over 100 kilometers from the nearest urbanized area. The 1980 population level was approximately 16,500. In 1978, this County was designated as not attaining the ozone NAAQS based on monitored exceedances of the standard recorded in this County from 1974–1976. In 1979, the NAAQS for ozone was revised from 0.08 part per million (ppm) to 0.12 ppm (44 FR 8220). The current standard is attained when the expected number of days per calnedar year with maximum hourly concentrations above 0.12 ppm is equal to or less than 1. In rural ozone nonattainment areas, EPA requires only the adoption of stationary source volatile organic compound (VOC) RACT regulations on major sources. Transportation control measures are not required in rural nonattainment areas, because the combination of controls on major stationary sources in all nonattainment areas and the development of transportation control plans in urban areas, should assure attainment in the rural areas by minimizing pollutant transport from urban to rural areas. EPA approved Wisconsin's VOC RACT regulations on January 11, 1980, and June 21, 1982 (45 FR 2319, 47 FR 26622) and approved Wisconsin's transportation control plans on May 6, 1981 (46 FR 25294). Thus, based on the location of the County relative to an urban area and the population, the County would not be expected to record exceedances of the current standard.

On March 14, 1983, the WDNR requested that EPA revise the designation for Vilas County from nonattainment to attainment of the ozone NAAQS. Additionally, the State submitted monitoring data collected in this area during the 1981 and 1982 ozone seasons which show that there were no expected exceedances of the standard. Therefore, EPA is proposing to approve the State's request to redesignate the County to attainment.

Brown County—Ozone

Brown County was designated in 1978 as not attaining the ozone NAAQS based on monitored exceedances of the standard recorded during 1976 and 1977. As required by Part D of the Act, Wisconsin revised its SIP to require sufficient reductions in county-wide emissions of ozone precursors, called volatile organic compounds (VOC), to attain the standard by December 31, 1982. EPA approved the State's revision in a final rulemaking action on May 6, 1981 (46 FR 25294).

Brown County contains the City of Green Bay, which had a 1980 urbanized area population of 142,747. One monitor provides the only ozone monitoring data in Brown County and provides the basis for Wisconsin's request, dated March 14, 1983, to redesignate the County to attainment.

Available data show that the Green Bay monitor obtained valid daily maximum concentrations for over 80 percent of the days in the ozone season for 1981 and 1982. No exceedances were recorded either year. Wisconsin also reports limited data from this monitor collected by an industry in 1979 and 1980, but these data are not quality assured by the State. These data show no exceedances of the standard. Based primarily on the data from 1981 and 1982, the monitor is showing attainment of the standard. Therefore, EPA is proposing to revise the designation to attainment for ozone.

Dane and Columbia Counties—Ozone

On March 14, 1982, the WDNR requested that EPA redesignate Dane and Columbia Counties from nonattainment to attainment of the ozone NAAQS. EPA reviewed the State's request and supporting monitoring data for both Counties together because EPA considers them to be a single source-receptor area for ozone. EPA approved Wisconsin's SIP for this area in a final rule in May 6, 1981 (46 FR 25294).

The results of EPA's review of the State's ozone monitoring data show no exceedances of the standard during 1980, 1981, and 1982 in Dane County. Ozone monitoring data collected in Columbia County show four recorded exceedances of the standard occurring in 1980. Ozone levels in excees of 0.12 ppm were recorded three times at the Military Road site and one time at the Messer site.

At the Military Road site, exceedances were recorded on April 21, April 22, and May 23, 1980. However, the readings on April 21 and 22 appear unreliable for the following reasons. (1) The data show that the monitor did not operate from 2 p.m. on April 20 to 9 a.m. on April 21, when the instrument restarted by reading .103 ppm. There

was little of the expected diurnal variation during the next 26 hours. Concentrations stayed between 0.90 ppm and .139 ppm both day and night. The failure of the instrument to record the usual low concentrations at night casts doubt on the reliability of these measurements. (2) Further doubt is cast on these measurements by the fact that this monitor failed two audits in 1979 and was not recertified until the end of May 1980. These two considerations suggest that these readings represent instrument errors rather than actual exceedances. For the same reasons, the exceedance recorded by the Messer site on April 21, 1980, also appears to represent instrument error rather than an actual exceedance.

Thus, it appears that only one exceedance occurred in Dane and Columbia Counties between 1980 and 1982, as recorded by the Military Road site on May 23, 1980. This site would be calculated as having 0.4 expected exceedance per year and all other sites in Dane and Columbia Counties would show 0.0 expected exceedances per year. The ozone standard allows up to 1.0 expected exceedance. Consequently, EPA is proposing to approve the State's request to designate these Counties to attainment for ozone.

All interested persons are invited to submit written comment on the proposed redesignations. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignations. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

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).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: August 9, 1983.

Charles H. Sutfin,

Regional Administrator.

[FR Doc. 83-27780 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[EPA Action, MO 1117; A-FRL 2450-8]

Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). EPA today proposes to redesignate a portion of the Kansas City, Missouri, metropolitan area from nonattainment to attainment with respect to the primary NAAQS for total suspended particulates (TSP). This portion would remain designated nonattainment for the secondary TSP standard. This redesignation proposal is based on a request from the Missouri Department of Natural Resources (MDNR). The request was supported with recent air monitoring data.

DATE: Public comments should be received by November 14, 1983.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.

The state submission is available for inspection during normal business hours at the above address, and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (816) 374-6525, or FTS 758-6525.

SUPPLEMENTARY INFORMATION: In response to Section 107(d) of the Clean Air Act, as amended, EPA and the State of Missouri have designated all areas of the state as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one in which the air quality does not exceed the standards. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there are insufficient data to determine whether the area is attainment or nonattainment. EPA's Section 107 designation policy is summarized in an April 21, 1983 memorandum from Sheldon Meyers. At 40 CFR Part 81, Subpart C, the areas of the State which are nonattainment for one or more pollutants are identified.

The primary NAAQS for TSP consist of a 24-hour value of 260 micrograms per cubic meter ($\mu g/m^3$), not to be exceeded more than once per year, and an annal value of 75 $\mu g/m^3$. The secondary NAAQS for TSP is a 24-hour value of 150 $\mu g/m^3$, not to be exceeded more than once per year.

On January 20, 1983, the MDNR submitted a request to redesignate the attainment status of a portion of the Kansas City, Missouri, metropolitan area. This area was designated nonattainment with respect to the primary NAAQS for TSP on March 3, 1978 at 43 FR 8962, as amended on April 4, 1980 at 45 FR 22931. This area is surrounded by a secondary TSP nonattainment area in Missouri and bordered on its west edge by the Kansas State line. The full description of this area is in the state submission.

There are six TSP monitoring sites located within the primary nonattainment area. The monitoring data show two years (1981-1982) of primary NAAQS attainment. In addition, there is an EPA approved SIP control strategy which provides enforceable emission reductions. Therefore, this redesignation request complies with Agency policy. Since the secondary standard was exceeded at two sites in 1981, the area must remain designated secondary nonattainment. There are no other primary TSP nonattainment areas within the Missouri portion of the Kansas City metropolitan area.

Action: EPA proposes to remove the primary nonattainment designation and retain the secondary nonattainment designation for the Kansas City, Missouri, TSP nonattainment area.

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.)

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

This notice of proposed rulemakng is issued under the authority of Sections 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601).

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: September 1, 1983.

Morris Kay,

Regional Administrator.

[FR Doc. 83-27784 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1502 and 1508

Proposed Guidance Memorandum for Federal Agency NEPA Liaisons Concerning the Requirement for a Worst Case Analysis

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Notice of proposed Information Guidance and Request for Comments; extension of time.

SUMMARY: On August 11, 1983, the Council on Environmental Quality published a "Proposed Informatoin Guidance and Request for Comments", 48 FR 36486, Aug. 11, 1983, requesting that comments be submitted by October 11, 1983. The comment period is herewith extended to October 21, 1983. This extension was requested by various organizations and individuals.

DATES: The comment date is extended to October 21, 1983.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, N.W., Washington, D.C. 20006 (202) 395-5754

A. Alan Hill,

Chairman.

October 7, 1983.

[FR Doc. 83-27878 Filed 10-11-83; 11:27 am]

BILLING CODE 3125-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Cancel Standard Form 1131, U.S. Government Transit Bill of Lading

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amended the Federal Property Management Regulations (FPMR) by cancelling the U.S. Government Transit Bill of Lading (GBL) set, Standard Form (SF) 1131 through SF 1134. The National Archives and Records Service (NARS) advises that there have been no orders received for this form from Federal agencies for the past year. NARS recommends cancelling the form. The cancellation of SF 1131 through SF 1134 will not affect shipments accorded transit privileges because the transit information will be shown on the regular GBL set (SF 1103 through SF 1106).

DATE: Written comments must be received by no later than 4 p.m. on November 28, 1983.

ADDRESS: Comments should be sent to General Services Administration (BWCP), 18th and F Streets, NW., Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures and Claims Branch, Office of Transportation Audits (202-786-3014).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

It is proposed to amend 41 CFR Part 101-41 as follows:

PART 101-41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The table of contents for Part 101-41 is amended by revising and removing the following entries:

Sec.

101-41.305-1 General instructions for the preparation of GBL's involving transit and other problem areas.

101-41.305-3 Preparing GBL's covering free or surrendered transit.

101-41.4901-1131 [Removed]

101-41.4901-1131-A [Removed]

101-41.4901-1131-B [Removed]

101-41.4901-1132 [Removed]

101-41.4901-1133 [Removed]

101-41.4901-1134 [Removed]

2. Section 101-41.302-1 is amended by removing and reserving paragraphs (o) through (t) as follows:

§ 101-41.302-1 Listing forms.

* * * * *

(o)-(t) [Reserved].

* * * * *

3. In § 101-41.302-2, paragraph (a) introductory text, (d) and (e) are revised and paragraph (b) is removed and reserved to read as follows:

* * * * *

§ 101-41.302-2 Description and distribution of bills of lading.

(a) The U.S. Government bill of lading (GBL) consists of six basic forms and is available in sets of seven or nine parts, depending on the number of memorandum copies needed. The sets are carbon-interleaved for simultaneous preparation. The GBL set is arranged in the following order:

* * * * *

(b) [Reserved].

* * * * *

(d) The GBL continuation sheets (SF 1109 through 1112) are also available in seven- or nine-part sets and are arranged in order corresponding to the GBL sets. The continuation sheets are for use with the regular GBL and the personal property GBL.

(e) Separate sheets of the memorandum copies (SF 1103-A, SF 1109-A, and SF 1203-A) are available to Government agencies for addition to the seven- or nine-part sets.

4. In § 101-41.3202-4, paragraph 3(a) is revised to read as follows:

§ 101-41.302-4 General instructions for the preparation of GBL's and common problem areas.

(a) Availability of guide. Instructions for the preparation of GBL's and related forms are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610-00-682-6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

5. Section 101-41.302-7 is revised to read as follows:

§ 101-41.302-7 GBL correction notice.

SF 1200 is used to alter or correct the GBL and the personal property GBL. It is a single sheet form, and the number of copies to be prepared and distributed will be a matter for each Federal agency to establish. Recipients of a correction notice will alter or correct the GBL as indicated on the notice and attach the form to the GBL. Preparation of SF 1200 is not required when alterations or

corrections are made prior to the distribution of the GBL. This form is not subject to the provisions of the Paperwork Reduction Act of 1980 (94 Stat. 2812, 44 U.S.C. Chapter 35).

6. In § 101–41.305–1, paragraphs (a), (b), (1) and (2) are revised as follows:

§ 101–41.305–1 General instructions for preparing GBL's involving transit and other problem areas.

(a) *Availability of guide.* Instructions necessary to provide carriers with inbound transit information are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610–00–682–6740). Agencies may obtain copies of the guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the rquesting activity. Though the U.S. Government Transit Bill of Lading set (SF 1131 through SF 1134) has been cancelled, the information contained in the illustrations on page 33 through 37 of the guide for the preparation of those forms is still relevant and must now appear on the regular GBL.

(b) *Common problem areas.* (1) The "Certificate of Carrier Billing for Charges" section is reserved for the recording of certain data by the accounting officer of the billing carrier and shall not be coverd by marks or writing by others handling the GBL. This section on the memorandum copies of the GBL is available to the issuing officer for showing estimated transportation charges and such accounting classification as may be required.

(2) The issuing office shall complete the "For Use of Issuing Office" section of the GBL, including any GBL involving transit to be used by a contractor as shipper. Failure of the issuing office to show the date and number of the contract, purchase order, or other authority for the shipment and failure to show the f.o.b. point named therein may result in a carrier's refusal to accept the shipment from the contractor-shipper. Accountability for a GBL involving transit used by a contractor-shipper remains with the issuing office. Thus, the name and address of the issuing office, rather than those of the contractor-shipper, shall appear on the GBL.

* * * * *

7. In § 101–41.305–2, paragraphs (b) and (c) introductory text are revised to read as follows:

§ 101–41.305–2 Transit records; Processing and distribution.

* * * * *

(b) Application of transit tonnage. Inbound transit information shall be provided in the "Description of Articles" block of the GBL or, lacking space, on a U.S. Government Bill of Lading continuation sheet which is to be attached to the GBL.

(c) Furnishing transit certificates. Transit certificates (record of transit and application) need not be prepared and furnished to GSA (BWAA/C) when the paying office normally verifies or enters the inbound billing information in the "Description of Articles" block of the GBL. If the paying office does not verify or provide inbound billing information, the certificates shall be furnished to General Services Administration (BWAAC/C), Washington, D.C. 20405, as follows:

* * * * *

8. Sections 101–41.305–3, 101–41.305–4, and 101–41.305–5 are revised to read as follows:

§ 101–41.305–3 GBL's covering free or surrendered transit.

A GBL covering free or surrenderd transit is issued for use with an outbound shipment from the transit installation where the line-haul charge to the transit installation equals or exceeds the through transportation charge plus the transit charge. After completing the "Certificate of Carrier Billing for Charges" section of the free GBL covering transit, the billing carrier shall attach the GBL to an SF 1113 bearing the carrier's bill number and submit both forms to the paying office of the agency concerned with a check for any amount due the United States.

§ 101–41.305–4 Billing for transit shipments.

A separate SF 1113 with the work "TRANSIT" typed immediately beneath the caption "ALPHA PREFIX AND SERIAL NO. OF SUBVOUCHER" shall be prepared for each GBL covering a transit shipment.

§ 101–41.305–5 Paying office action on transit billings.

The paying office shall verify and, if necessary, correct the transit information shown on the GBL. When the required transit information is not shown, the paying office shall enter the following information in the "Description of Articles" block of the GBL, or on a GBL continuation sheet, under a heading "INBOUND BILLING REFERENCES": the disbursing office (D.O.) voucher number, bureau voucher number, if any, the date of payment, and the D.O. symbol number of the inbound billing, before forwarding the SF 1113 and a notice of any refunds to GSA (BWAA/C). Vouchers with the accompanying GBL covering free or surrendering transit shall be transmitted to GSA (BWAA/C) separate from other types of transportation vouchers.

9. In § 101–41.306, paragraph (b) is revised to read as follows:

§ 101–41.306 Disposition of GBL forms upon delivery of property to carrier for shipment.

* * * * *

(b) The issuing office shall retain a certified memorandum copy; i.e., the issuing office copy (SF 1103–A and SF 1109–A, if any), and send the consignee copy (SF 1103–B and SF 1109–B, if any) to the consignee. A contractor acting as shipper shall retain one certified memorandum copy, forward one copy to the issuing office, and send the consignee copy to the consignee.

* * * * *

10. Section 101–41.307–1 is revised to read as follows:

§ 101–41.307–1 Substitute document.

When the original GBL (SF 1103) has been lost or destroyed, the billing carrier shall use the freight waybill (original) (SF 1105), properly certified by the issuing office and by the carrier, as a substitute document for billing the charges. Execution of the "Certificate of Carrier Billing for Charges" on the substitute document is not required for charges billed under the exception procedures in § 101–41.312.

11. Section 101–41.307–6 is revised to read as follows:

§ 101–41.307–6 Lost GBL's and freight waybills (original).

When both the original GBL (SF 1103) and the original freight waybill (SF 1105) are lost or destroyed, the carrier shall request from the issuing office a certified true copy of that office's memorandum copy (SF 1103–A) of the GBL. The issuing office shall make its certification regarding the services requested on the reverse of that copy and forward it to the carrier for certification of delivery and billing. Execution of the carrier's certificate of delivery on the substitute document is not required for charges billed under the exception procedures in § 101–41.312. If the lost GBL (original) or freight waybill (original) is recovered, the procedures in § 101–41.307–4 and § 101–41.307–5, as applicable, shall be followed.

12. In § 101–41.308–1, paragraph (b) is revised to read as follows:

§ 101–41.308–1 Agency control.

* * * * *

(b) The personal property GBL assemblies are sequentially numbered with six digits and a two-letter prefix, the second of which is always P; e.g., AP-000,001 through AP-999,999, then BP, CP, etc.

13. In § 101-41.310-2, paragraph (a) is revised to read as follows:

§ 101-41.310-2 Preparation of carrier billing forms.

(a) Instructions for the preparation of SF 1113, Public Voucher for Transportation Charges, are furnished in the GSA guide "How to Prepare and Process U.S. Government Bills of Lading" (national stock number 7610-00-682-6740). Agencies may obtain copies of this guide by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office providing support to the requesting activity.

* * * * *

14. Sections 101-41.4901-1131, 101-41.4901-1131-A, 101-41.4901-1131-B, 101-41.4901-1132, 101-41.4901-1133, and 101-41.4901-1134 are removed.

§§ 101-41.4901-1131 through 101-41.4901-1134 [Removed]

(31 U.S.C. 3726 and 40 U.S.C. 486(c))

Dated: September 20, 1983.

Raymond A. Fontaine,

Comptroller, General Services Administration.

[FR Doc. 83-27598 Filed 10-12-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 157

[Docket No. CGD 77-084]

Licensing of Pilots; Manning of Vessels—Pilots

AGENCY: Coast Guard, DOT.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: On January 27, 1983, the Coast Guard published a Supplemental Notice of Proposed Rulemaking regarding the licensing of pilots (48 FR 3912). The comment period was reopened and extended to allow for four public hearings. The comment period ended July 20, 1983. This notice will again reopen and extend the comment period for the sole purpose of providing notification and opportunity for interested persons to review data received from the American Waterways Operators, Inc. (AWO) and to comment on that data.

DATES: Comments must be received on or before November 28, 1983.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) (CGD 77-084) U.S. Coast Guard, Washington, D.C. 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593, (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G-MVP/14), Room 1400, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593 (202) 426-2985.

SUPPLEMENTARY INFORMATION: During the preparation of the supplemental notice of January 27, 1983, the Coast Guard requested The American Waterways Operators, Inc. (AWO) to provide data regarding barge movements and pilotage costs of its member companies. Data was received from AWO which the Coast Guard utilized in the supplemental notice of January 27, 1983. The Coast Guard again requested AWO to provide updated barge movement and pilotage cost data. AWO has submitted summary barge movement and pilotage cost data obtained from its member companies for calendar year 1982. This data was received after the close of the comment period. Because the Coast Guard intends to make use of this data received from AWO, the comment period is reopened and extended to November 28, 1983. This reopening and extension of the comment period is for the purpose of providing notification and an opportunity for interested persons to review the following data received from AWO and to comment on that data.

Data Received From AWO

On July 11, 1983, AWO conducted a mail survey of the tank barge industry to determine the number of movements and the pilotage costs incurred by the requirements of 46 U.S.C. 364 as it relates to tank barges of 1,000 gross tons or larger. The following is a summary of the survey:

Period surveyed: January 1, 1982—December 31, 1982.	
Number of companies responding	17
Approximate number of tank barges operated	200
Approximate number of tank barges in fleet	500
Percentage of industry responding	40

EAST COAST—NINE COMPANIES REPORTING

Type of move	Number of moves	Pilotage cost
Entry	2,883	$1,996,062
Exit	2,960	1,992,156
Intra-port	9,794	7,411,556
Inter-port	4,745	5,622,524
Total	20,502	$17,022,318

GULF COAST—NINE COMPANIES REPORTING

Type of move	Number of moves	Pilotage cost
Entry	1,397	$1,334,650
Exit	1,396	1,309,308
Intra-port	91	62,757
Inter-port		
Total	2,884	$2,706,915

WEST COAST—FOUR COMPANIES REPORTING

Type of move	Number of moves	Pilotage cost
Entry	498	$335,672
Exit	498	335,672
Intra-port	12,965	4,355,290
Inter-port	2,097	1,825,100
Total	16,058	$6,851,734

Total Movements: 39,444. Total Cost: $26,580,967.

In comparing the data collected in 1981 versus 1982, it must be noted that 1982 was a year of deep economic recession and that the barge and towing industry saw its business fall off 25 to 30%. Thus, if business had continued at the same rate as in 1981, there would have been a commensurate 25% increase in movements to 52,592 and pilotage of $35,441,289.

Also, for comparison purposes, the aggregate number of moves and costs in 1982 when the other 60% of the industry is included, would amount to 131,480 moves in 1982 at a cost of $88,603,223. In 1981, there were 103,374 moves at a cost of $76,600,000.

Dated: October 6, 1983.

L. N. Hein,

Captain, U.S. Coast Guard Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 83-27815 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286]

Jurisdictional Separations Procedures; Federal-State Joint Board Recommendations

AGENCY: Federal Communications Commission.

ACTION: Recommendation to Commission.

SUMMARY: The Federal-State joint board recommends changes in jurisdictional separations procedures. The Joint Board believes that the proposed changes in separations are necessary to ensure consistency with the Commission's access charge plan and to protect telephone subscribers in high cost areas. The Commission will now be able to review these recommendations and adopt final changes in the jurisdictional separations procedures to ensure consistency with the access charge plan and to protect subscribers in high cost areas.

The Commission announces its intention to publish full text in the **Federal Register** and codify into the Code of Federal Regulations a 1983/84 edition of the Separations Manual. The Separations Manual is incorporated by reference with the approval of the Director of the Federal Register; the incorporation by reference will be dropped with the full text codification of the Manual and all future amendments will be to Part 67 of the CFR.

EFFECTIVE DATES: Comments must be received on or before October 17, 1983. Replies must be received on or before October 27, 1983.

ADDRESS: Secretary's Office, Room 222, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Common Carrier Bureau, (202) 632-9342.

Second 'Recommended Decision and Order

In the matter of amendment of Part 67 of the Commission's rules and establishment of a Joint Board; CC Docket No. 80-286.

Adopted: April 15, 1983.
Released: September 26, 1983.

By the Federal-State Joint Board: Commissioner Marvin R. Watherly concurring and issuing a separate statement; Commissioner Anne P. Jones dissenting and issuing a separate statement.

Table of Contents

I. Introduction

A. Summary of Recommended Decision

1. The Federal-State Joint Board hereby presents its recommendations concerning resolution of the remaining issues in this proceeding.[1] The most important of these issues involves the allocation of non-traffic sensitive (NTS) local exchange plant costs [2] between the interstate and intrastate jurisdictions. There are also a number of issues concerning the allocation of traffic sensitive (TS) local exchange plant costs between the jurisdictions, as well as various technical changes to the *Separations Manual*. The first section of this *Order* summarizes the developments in this proceeding to date, and reviews developments in other related areas, particularly the Commission's access charge plan adopted in CC Docket No. 78-72, phase I, the *MTS and WATS Market Structure Inquiry*.

2. The second section of this *Order* contains the Joint Board's recommendations concerning a new basic allocation factor for NTS local exchange plant costs and measures to protect high cost areas, as well as background information concerning these issues. In general terms, we are recommending the following: (1) A basic 25 percent interstate allocation factor for all study areas applicable to investment in non-wideband subscriber loops used jointly for exchange service and toll message services (excluding WATS access lines) and inside wiring as well as the maintenance and depreciation expenses and reserves associated with these plant categories;[3] (2) an additional lump sum interstate expense allocation for study areas [4] with relevant unseparated (total intrastate and interstate) NTS local exchange costs [5] in excess of 115

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[1] Federal Communications Commissioners Anne P. Jones and Joseph R. Fogarty participated in the Joint Board's April 15, 1983, vote on these recommendations, but have since left the Commission. Commissioner Fogarty voted for the recommendations adopted at the April 15, 1983 meeting and approved a draft of this *Order* before leaving the Commission. He specifically authorized the staff to make appropriate changes to perfect the *Order*. Commissioners Jones and Fogarty did not consider the material discussed in paragraph 73.

[2] See paragraph 10 for an explanation of the telephone plant involved.

[3] The basic 25 percent allocation factor will also apply to Category 8 subscriber line circuit equipment associated with such jointly used non-wideband subscriber loops.

[4] A study area usually consists of a telephone company's service territory within a particular state.

[5] The relevant unseparated NTS costs include: (1) a return component for net plant investment in non-

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percent of the national average, based on a series of cost bands which provide a higher percentage interstate allocation for costs in the higher cost bands; [6] (3) division of the interstate and user common line revenue requirement calculated pursuant to Part 69 of the Commission's Rules into a subscriber access amount which will be reflected in subscriber access charges and a high cost amount which will be recovered through carrier's carrier access charges to prevent subscriber access charges from exceeding 200 percent of the national average; and (4) continued use of the frozen percentage Subscriber Plant Factor (SPF) [7] until January 1, 1986, followed by a transition period under which the 25 percent basic interstate allocation for jointly used subscriber loops, inside wire, and associated maintenance, depreciation, and reserves as well as the additional interstate expense allocation for high cost areas will be phased in in four equal steps, subject to the limitation that no study area is to experience a decrease in its interstate NTS allocation of more than 10 percentage points in any one year.

3. The other recommended changes in the allocation of local exchange plant include: (1) Minor revisions in the Outside Plant categories to track the categories used in Part 69 of the Commission's Rules; (2) direct assignment of subscriber loops used exclusively for intrastate or interstate private line or WATS access; (3) additional *Separations Manual* language to ensure that the benefits of the CPE phase out plan previously adopted by the Commission in this proceeding [8] continue to flow to the local Bell Operating Companies after the embedded CPE is transferred to AT&T under the provisions of the *Modified Final Judgment*, [9] with the interstate CPE related allocation based on the frozen percentage SPF; (4) continued allocation of NTS Category 6 central office equipment (NTS Category 6 COE) to the interstate jurisdiction on the basis of frozen SPF pending further study of the need for changes in the categorization and allocation of this plant; (5) the adoption of seven (calendar) day traffic studies in lieu of five (business) day studies; (6) the inclusion of unweighted ENFIA dial equipment minutes of use in the allocation of traffic sensitive local dial switching equipment; (7) the revision of some language in the outside plant and central office equipment *Manual* provisions to treat explicitly digital electronic host/remote complexes; and (8) the treatment of open end FX and CCSA/ONALS used in interstate service as interstate for separations purposes. A number of other technical changes to the *Manual* were proposed in the November 1982 *Order*. Many of these were intended to simplify or modernize the separation procedures. The most significant of these other technical changes is the change from traffic units to weighted standard work seconds as the basis for the allocation of certain classes of manual office and operator expenses. Each of these "other" matters has a small or negligible dollar impact on the relative separation of costs between the jurisdictions.

B. History of the Proceeding and Related Developments

4. This Federal-State Joint Board was convened in July 1980 pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 410(c) (1976), to recommend amendments to the *Separations Manual* governing the allocation of local exchange plant investment between the intrastate and interstate jurisdictions.[10] *Amendment of Part 67 of the Commission's Rules*, 78 FCC 2d 837 (1980). Specifically, the Joint Board was directed to reexamine separations procedures in light of the increasing level of NTS exchange plant allocations to the interstate jurisdiction, the Commission's plans to prescribe some form of access charges in CC Docket No. 78-72,[11] the necessity of prescribing separations treatment for Foreign Exchange (FX) and Common Control Switching Arrangements (CCSA) and the Commission's decision in Docket No. 20828 to detariff customer premises equipment (CPE).[12]

5. The Joint Board has conducted this proceeding in two separate stages. On June 10, 1981, we adopted an *Order Requesting Comments* in which we solicited preliminary views on the specific issues to be addressed in the proceeding and asked for comment on a proposal, set forth in Appendix E to that *Order*, for the gradual removal of CPE related costs and expenses from the separations process. CC Docket No. 80-286, FCC 81-264, released June 12, 1981. In recognition of the relative urgency of resolving CPE separations issues to ensure the smooth and timely implementation of the Commission's detariffing policies, and the fact that the separations treatment of CPE could be handled separately as a discrete issue, we adopted a *Recommended Decision and Order* proposing that CPE be phased out of the separations process over a five year period.[13] We also took steps to limit the growth of interstate allocations of NTS local exchange plant pending final resolution of the issues involved in this proceeding. We believed that this was necessary in order to limit the dislocations which might result from a transition to a new allocation scheme for NTS costs.[14] Thus, in a separate *Recommended Interim Order*, we proposed that the Commission freeze SPF [15] at the 1981

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wideband subscriber loops jointly used for exchange and message toll services (excluding WATS access), calculated on the basis of the actual debt/equity ratio, the actual cost of debt and the authorized rate of return on equity for interstate access service; (2) associated maintenance and depreciation expenses; and (3) an amount of general expenses, certain other operating expenses, and taxes proportionate to the net investment in non-wideband subscriber line outside plant jointly used for local exchange and message toll services excluding WATS access.

[6] This additional interstate allocation is to be calculated after the basic state and interstate allocations have been determined pursuant to the other provisions of the *Manual*. It will be deducted from the state allocation calculated pursuant to the other *Manual* provisions, lowering the state revenue requirement and keeping intrastate rates lower than they otherwise would be.

[7] See note 15 for an explanation of SPF.

[8] CC Docket No. 80-286, Amendment of Part 67 of the Commission's Rules, 89 FCC 2d 1 (1982), *modified*, 90 FCC 2d 52 (1982).

[9] United States v. AT&T, 552 F. Supp. 131 (1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983).

[10] The *Separations Manual* is presently incorporated by reference in Part 67 of the Commission's Rules.

[11] MTS and WATS Market Structure, Phase I, Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980); Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135 (1982); Third Report and Order, FCC 82-579, released February 28, 1983, 48 FR 10319 (March 11, 1983), *reconsideration*, FCC 83-356, released August 22, 1983, *appeal pending sub nom.* NARUC v. FCC (D.C. Cir. No. 83-1225, filed March 1, 1983).

[12] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983).

[13] This recommendation provided for the capping of CPE plant accounts for separations purposes as of December 31, 1982 and the capping of CPE related expenses at 1982 average levels. Starting January 1, 1983, in coordination with the date for detariffing CPE set by the Commission in the *Second Computer Inquiry*, these base amounts were to be reduced by one-sixtieth per month with all interstate allocations terminating at the end of the five year transition.

[14] Allowing the increase in the SPF based interstate NTS allocation to continue pending final action in this proceeding would have made the transition to a different interstate allocation methodology more difficult.

[15] SPF is the allocation factor for NTS plant that was approved by the Commission in 1970 for use in the current *Separations Manual*. *Separations Procedures*, Docket No. 16866, 26 FCC 2d 247 (1970).

Continued

annual average level for each study area effective January 1, 1982.[16] CC Docket No. 80-286, FCC 81-565, released December 14, 1981. The Commission issued a *Further Notice of Proposed Rulemaking* requesting comments on the Joint Board's proposals, CC Docket No. 80-286, FCC 81-580, released December 21, 1981, and subsequently adopted both the CPE phase out plan and the interim SPF freeze, with a number of technical modifications.[17] CC Docket No. 80-286, *Decision and Order*, 89 FCC 2d 1 (1982), *recon. denied*, FCC 82-492, released November 8, 1982, *appeals pending sub nom. MCI Telecommunications Corp.* v. *FCC* (D.C. Cir. Nos. 82-1237, 82-1456, filed March 4, 1982).

6. In the second stage of this proceeding, we focused on the need to recommend permanent changes in the separations procedures for allocating non-traffic sensitive and traffic sensitive exchange plant, ensuring the inclusion of all interstate services, particularly FX, CCSA and ENFIA, within the separations process, providing for compatibility between separations procedures and the Commission's access charge plan, and making various modifications to the *Manual* regarding the administration of the separations process, traffic measurement, and the general simplification and modernization of various separations procedures affecting local exchange plant.[18] In the November 1982 *Order Requesting Further Comments* we set out specific proposals for most of the separations changes under consideration other than the basic allocation factor for NTS costs. These proposals included provisions governing the treatment of ENFIA services, interstate assignment of revenues, investment and expenses associated with interstate FX and CCSA/ONALS service, the establishment of an Information Bank and Federal State Technical Staff to ensure a more open administration of the separations process, the use of more representative study periods and techiques for the measurement of exchange usage, minor modifications to the plan to phase CPE out of separations, and a number of miscellaneous technical changes.

7. With respect to the basic allocation methodology of NTS plant, rather than making specific proposals in the November 1982 *Order* we put forth a "menu of options" for consideration by the parties. Each of these options was based on the "generic formula" approved by the Joint Board at its February 24, 1982 meeting and included a usage factor or other basic allocation factor, a high cost factor to provide additional interstate allocations for telephone companies in high cost areas, and a transition factor to ensure a non-disruptive shift from SPF to the new allocation method.[19] The specific options for a basic allocation factor, which included usage based, gross assignment and hybrid approaches, are discussed more fully below. The options for a high cost factor included one based on surrogate variables related to costs, such as low density and small exchange size, and one directly based on costs. Options for a transition time factor included the selection of a particular number of years or a ceiling on the dollar amount of the change in the interstate allocation that would be allowed in any one year.

8. On December 22, 1982, subsequent to the issuance of the November 1982 *Order*, the Commission adopted its *Third Report and Order* in the *MTS and WATS Market Structure* proceeding, establishing a plan for replacing the interstate division of revenues and settlements process with a system of tariffed access charges. Under the access charge plan, as modified on reconsideration, [20] a major portion of the NTS local exchange costs which are allocated to the interstate jurisdiction through separations [21] ultimately will be paid for directly by subscribers through flat charges instead of being bundled into the message charges for interstate services. The change to the new system will be phased in over a six year period beginning January 1, 1984.[22] Interexchange carriers will pay nationwide average access fees for certain interstate NTS local exchange plant costs including the costs of CPE, which are being phased out of separations, inside wire, NTS Category 6 COE and the Universal Service Fund which will provide rate support for high cost areas. [23] The Commission provided that the Universal Service Fund would be based on a high cost factor to be established by the Joint Board to "promote or preserve universal service by enabling high cost companies to establish local exchange rates that do not substantially exceed rates charged by other companies." CC Docket No. 78-72, Phase I, FCC 82-579 at 43 (1982). The Commission's decision adopting an access charge plan and Universal Service Fund mechanism removed a great deal of the uncertainty surrounding our choice of the particular elements for a new NTS local exchange plant allocation methodology within the generic formula.

9. At our March 1983 meeting, we adopted four basic principles to govern the allocation of NTS local exchange plant costs between the jurisdictions. We stated that the separations plan must: (1) Provide certainty to all parties; (2) be administratively workable; (3) ensure the permanent protection of universal service; and (4) be fair and equitable to all parties. At that time, we also decided on the basic outline of a new NTS allocation plan. We found that frozen percentage SPF should continue to be used as the basic allocation factor for at least one year. We also stated that we intended to recommend a new NTS allocation methodology that would result in fair, even-handed treatment of all states, telephone companies and subscribers while keeping existing nationwide jurisdictional separations at approximately the present level. We

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The factor is rendered as SPF + .85 SLU + [2SLU × CSR], with SLU (subscriber line usage) as a measure of relative use and CSR (composite station rate) a factor related to interstate toll rates and the average length of haul for interstate toll calls. The multiplicative nature of the formula magnifies the allocative impact of increases in relative interstate usage.

[16] This action was intended to preserve the *status quo* in terms of the state and interstate percentage allocation of jointly used subscriber plant, although we recognized that the actual dollar level of the interstate allocation would continue to rise somewhat as a result of inflation and increases in NTS plant investment.

[17] At the same time that the Commission adopted the CPE plan, the Joint Board recommended amendments to the plan that would permit the capping of CPE accounts in advance of the previously established date to facilitate the implementation of CPE sale programs before January 1, 1983. CC Docket No. 80-286, 89 FCC 2d 607 (1982). After providing an opportunity for comment, CC Docket No. 80-286, 89 FCC 2d 604 (1982), the Commission adopted these amendments. CC Docket No. 80-286, 90 FCC 2d 52 (1982).

[18] In the course of our review of various proposals for such miscellaneous changes we have noted the desirability of making certain changes in the separations treatment of interexchange plant. However, we view the consideration of interexchange plant issues as beyond the purview of our present mandate, and thus do not address them here.

[19] The generic formula was stated as follows:
ACF = [UF + HCF) × T] + [SPF(1-T)]
Where:
ACF = Access Cost Factor
UF = Usage Factor
HCF = High Cost Factor
T = Transition Time Factor
SPF = Subscriber Plant Factor

[20] MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, FCC 83-356, released August 22, 1983.

[21] At present NTS local exchange costs allocated to the interstate jurisdiction are recovered through the charges for interstate message services.

[22] The Commission has indicated that it will initiate a proceeding to review the results of the access charge decision before the end of the third year of the transition period.

[23] Interexchange carriers also will pay separately tariffed access charges for the use of traffic sensitive exchange facilities including Category 6 NTS plant in the origination and termination of their interstate services.

also found that a permanent high cost factor based on unseparated (total intrastate and interstate) NTS local exchange costs excluding CPE and inside wiring, should be adopted to protect universal service. In addition, we requested comments on: (1) The length and timing of the transition to the new NTS allocation factor; (2) the maximum change per year to be allowed in a local telephone company's interstate allocation; (3) what provisions, if any, should be made for companies that will experience extraordinary changes in their interstate allocation; and (4) the point at which the high cost factor should begin to apply—110 percent or 120 percent of the national average. In conclusion, we recommended that the Commission extend this Joint Board's mandate to include monitoring implementation of the access charge decision and the changes in jurisdictional separations. CC Docket No. 80-286, *Statement of Principles and Requests for Further Comments*, CC 3111, released March 23, 1983.

II. Allocation of Non-Traffic Sensitive Local Exchange Plant Costs

A. Background

1. NTS Plant

10. NTS local exchange plant includes CPE, inside wiring, the line from the subscriber's premises to the central office, and certain central office equipment.[24] This portion of local exchange plant is termed non-traffic sensitive because the costs associated with it do not vary with usage. Instead they are incurred to provide individual subscribers with dedicated circuits to the local central office and thus are largely a function of the number of subscribers connected to the network. As the Commission noted in its *Interim Decision* in Docket No. 16258, a general investigation of Bell System interstate rates:

> Unlike other classes of plant, such as dial switching equipment and exchange toll trunks, subscriber plant is not traffic sensitive, that is, it is not engineered to handle expected volumes of traffic. The purpose and function of subscriber plant are to make both local and long-distance telephone service available to the subscriber through connection with switching and trunk plant. It does so without regard to the volume or classes of calls the subscriber may originate or receive.

[24] A portion of Category 6 local dial switching equipment costs are presently allocated on a NTS basis in the *Separations Manual*. Unless otherwise specified, the term NTS COE refers to this plant. Certain Category 8 circuit equipment is also non-traffic sensitive.

AT&T Charges for Interstate and Foreign Communications Service, 9 FCC 2d 30, 102 (1967).

11. As we pointed out in our November 1982 *Order*, NTS local exchange plant which is used for both intrastate and interstate services, does not easily lend itself to jurisdictional allocation measures grounded in theoretical economics or otherwise rationally related to the basis upon which the costs are incurred. This stands in sharp contrast to traffic sensitive plant for which usage is a rational and generally accepted cost allocation method. Despite this, the *Minnesota Rate Cases*, 230 U.S. 352 (1913) and *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930) require the apportionment of jointly used carrier plant between intrastate and interstate operations. The search for a proper and reasonable method of effecting a jurisdictional separation of NTS telephone plant costs has challenged state and federal regulators as well as the industry for decades.

2. History of Separations

12. Separations procedures, especially those for NTS local exchange plant, have undergone numerous revisions.[25] In the early days of telephony, most Bell System separations studies, conducted in connection with state rate proceedings, reflected the "board-to-board" approach under which only the costs of facilities located on the trunk side of the originating local switchboard were allocated to toll operations. In *Smith*, the Supreme Court found that a separations apportionment should not "ignore altogether the actual uses to which property is put." 282 U.S. at 151. This eventually led to adoption of the "station-to-station" approach under which all local telephone plant is allocated between the jurisdictions. Usage based allocations of subscriber plant were used to implement this approach. State and federal regulators as well as the industry began to work together on separations problems in 1941 following interstate rate reductions and the appearance of serious disparities in interstate and intrastate toll rate structures.

13. Over the next thirty years, several different separations plans were employed. All of them were generally based on usage measures, although they varied greatly in effect depending on the degree of aggregation or disaggregation of the plant categories, the extent of direct assignment as opposed to usage allocation, and the application of various value factors to the relative use measures. Some of the value factors that were proposed or used included "calling availability" to reflect the increased value of extended area service, "deterrence" weightings to reflect differences in use between flat rate exchange service and message rate toll service, "standby time allocation" to reflect the fact that the average local loop and telephone are actually used for a very small period of time each day, and "distance weightings" based on the assumption that the value of telephone service increases with distance.

14. Although federal staff members and commissioners had been involved in the development of various separations plans, the Commission did not take any official action concerning separations until this issue was made a part of the general investigation of interstate rates in Docket No. 16258.[26] In 1965, the same year that proceedings in Docket No. 16258 were initiated, the Bell System and NARUC introduced a separations plan which had been developed at meetings in Denver, Colorado (the "Denver Plan") explicitly recognizing the concept of "relative value" in the design of apportionment factors. The Denver Plan required the apportionment of subscriber lines and station equipment on the basis of a use-user factor designed "to reflect the relative value of the availability for message toll use of subscriber line and station equipment plant."[27] It also introduced the application of weighting factors for toll minutes of use of local dial switching equipment. The mechanics of this approach quickly proved unworkable and AT&T and NARUC took the position that the value of availability as well as actual use of subscriber plant for toll services could be better recognized by a distance weighted usage factor related to the length of haul. 9 FCC 2d at 105.

[25] For a description of the history of separations, see NARUC FCC *Separations Manual*, February 1971, pp. 5-8; Gabel, *Development of Separations Principles in the Telephone Industry*, Michigan State University, 1967.

[26] In 1941, the Commission instituted a formal investigation of interstate rates, including separations procedures, in Docket No. 6328. Although formal hearings were held, a decision on separations was never issued and the proceeding was ultimately closed in 1966 after the initiation of the telephone rate investigation in Docket No. 16258.

[27] The independent telephone companies presented an alternative distance weighted plan, also based upon the assumption that value increases with distance, which would have produced a slightly higher interstate allocation than the AT&T NARUC plan. Western Union presented a third alternative that averaged a 25 percent availability factor with the actual use in each study area. The Commission rejected the independent telephone company availability plan as arbitrary and without a rational basis. 9 FCC 2d at 108.

15. The Commission declined to adopt distance as the sole measure of the value of toll calls. Instead, the Commission considered it important to take into account:

> [T]he fact that subscriber plant is not traffic sensitive; that its principal function is to provide subscribers with a constantly available access to and from the exchange and long-distance telephone networks; and that the costs of such plant are largely the function of this availability rather than use alone.

9 FCC 2d at 108. The Commission concluded that

> [M]ost significant is the fact that actual use of subscriber plant for long-distance service is restricted by the rate features of the toll rate schedules which, in contrast with exchange rate schedules, provide for individual charges for each message, and which are further based on time and distance.

Id. Although recognizing that the deterrent effect of the toll rate structure could not be quantified exactly, the Commission concluded that an appropriate allowance for this effect would be created by adding to each study area's actual interstate SLU a factor equal to 200 percent of the nationwide average interstate SLU for the total telephone industry.[28]

16. Contemporaneous with the closing of Docket No. 16258, the Commission instituted a new rulemaking proceeding to consider alternative separations plans proposed by NARUC and the telephone industry. *Jurisdictional Separations of Telephone Companies* (Docket No. 17975), 16 FCC 2d 317 (1969). The parties commenting in this proceeding argued that the Commission's plan, which employed a single uniform deterrence factor, ignored the fact that different deterrent effects were experienced in different service areas, failed to reflect adequately the increasing deterrent effect of the toll rate schedule as calling distances increased, offered no incentive for the development of additional interstate business in a given study area, and produced inequitable results among the states. The Commission modified the original formula in order to correct these deficiencies and provide for decreases in interstate allocations as interstate toll rates were reduced and the deterrent effect reduced. It reduced the first additive applied to study area SLU to 100 percent of nationwide average interstate SLU and provided for a second additive consisting of a modified SLU that reflected different rate (and thus deterrent) effects at different lengths of haul.[29] The Commission noted that there was "no means of precise mathematical measurement of the amounts necessary to give effect to all of the factors under consideration," but expressed the belief that the new procedures would produce fair and equitable results for all parties and represented "acceptable compromises between complex procedures which are costly to effectuate and less precise methods which are generally equitable and have the advantage of simplicity and ease of application." 16 FCC 2d at 328. In the same *Order*, the Commission incorporated the new separations procedures by reference into Part 67 of the Commission's Rules.

17. In 1970, the Commission initiated a further rulemaking concerning separations procedures in Docket No. 18866, and convened a Federal-State Joint Board pursuant to Section 410 of the Act[30] to recommend additional changes to the *Separations Manual*. That Joint Board concluded that the procedures then in use failed to reflect the wide variations in the deterrent effect of rate schedules for different distances, tended to inflate the costs of short haul toll and could not appropriately be used for the separation of costs between exchange and intrastate toll operations. The Joint Board recommended adoption of the current SPF formula (the "Ozark Plan")[31] to reflect more accurately the different deterrents to interstate use of subscriber plant in different study areas. The first part of the two part formula (.85 SLU) was intended to assign th same cost per minute of use to exchange, intrastate toll and interstate toll operations. The second part of the formula reflected the different deterrent effect produced by the toll rate structure in each study area. The Joint Board's recommendations in Docket No., 18866 were adopted without modification by the Commission effective January 1, 1971. *Separations Procedures*, 26 FCC 2d 247 (1970).

3.Effect of SPF

18. Since the Ozark Plan was instituted, the operative effect of the SPF formula has called into question the validity of the deterrence theory, and the implementation of that theory in the Ozark Plan. The argument for adjusting interstate allocations in light of deterrence created by the interstate toll rate structure is based on the assumption that a generally usage based allocation method would assign an insufficient portion of NTS local exchange plant costs to interstate operations absent Compensation for the deterrent effect of message rate structures. However, the increase in relative interstate use over the past twelve years indicates that the message toll rate structure does not create insurmountable inhibitions to growth. It is probably true that, absent significant changes in calling patterns over time, a usage based factor more accurately reflects a proportional allocation of NTS plant if it is adjusted for the different effects that flat and message rate structures have on usage. Despite this, it is not apparent that a deterrence adjustment is necessary to produce an essentially reasonable allocation of NTS costs, especially in light of the significant and consistent growth in interstate relative use.

19. In addition, as was recognized when the Ozark Plan was first adopted, it is not possible to gauge the actual deterrent effect of a particular rate structure with any degree of precision. Even if the SPF formula accurately reflected the deterrent impact on toll usage produced by the rate strucutee in effect in 1970, it cannot be viewed as producing the same degree of accuracy today. The continued increase in Bell System interstate relative usage despite the availability of competitive alternatives, the emergence of measured local rates, as well as the growth of the importance of telecommunications in the overall economy indicate that an adjustment which might have been justified in 1970 cannot serve as a sound estimate of deterrence today. The multiplicative effect of SPF also creates anomalous results since the deterrence adjustments continue to magnify interstate allocations even though the growth in relative interstate use indicates that any actual deterrence that might exist is of decreasing importance. In fact, the divergence from actual use increases as relative interstate use

[28] The effectiveness of these separations changes was briefly stayed pending review or reconsideration, but was subsequently reaffirmed by the Commission without further modification. Memorandum Opinion and Order, 11 FCC 2d 493 (1968).

[29] This second additive consisted of the study area SLU multiplied by the ratio of the average interstate initial period station rate at the study area average interstate length of haul to the nationwide composite total toll initial period station rate at the nationwide average length of haul for all toll traffic nationwide. This ratio is essentially the same as the CSR ratio used in the SPF formula which is shown in footnote 15 supra.

[30] The establishment of this Joint Board predated the enactment of the current Section 410(c) of the Act, Pub. L. 92-131, approved September 30, 1971, 85 Stat. 383, which specifically requires the Commission to refer proceedings concerning jurisdictional separations to a board composed of three federal and four state commissioners for the preparation of a recommended decision.

[31] The plan was so name because the Technical Staff decided to recommend the plan at a meeting at lake of the Ozarks, Missouri.

grows. Due to this, the proportion of subscriber plant costs, allocated to interstate, which is now approximately 26 percent nationwide, would eventually rise to an unsound level if use of the SPF formula were to continue.[32] In addition, the Commission froze SPF pending adoption of a new method for allocating NTS local exchange plant costs. As a result, both the 85 percent adjustment to SLU and th CSR ratio, which were originally designed to fluctuate as actual rates and traffic patterns changed, are now frozen and no longer reflect actual current values.

B. NTS Allocation Options

1. Usage Based Allocation Methodology

20. In the November 1982 *Order*, we described five basic allocation plans. Two of these plans allocated NTS local exchange plant costs on the basis of relative use. Another plan involved a gross assignment or flat percentage allocation approach which assigned a fixed percentage of NTS local exchange plant costs to each jurisdiction. We also described two hybrid plans which incorporated aspects of both the usage and gross assignment approaches. The first plan we described was a usage based approach, referred to as NUSLU, proposed by the telephone industry. It utilized SLU modified to include open end FX and CCSA/ONALS [33] usage, and included the effect of seven (calendar) day traffic studies. This allocation factor was intended to apply to NTS local dial switching equipment, subscriber lines, drop wire, inside wire, and terminal equipment in Accounts 231 and 234 other than customer premises equipment. The proponents of this plan predicted that it would produce a 60 percent decrease in interstate NTS cost assignments based on 1980 data. In the discussion of this plan in the November 1982 *Order* we noted that it would work very well with a usage based access charge approach.

21. The second usage based NTS allocation methodology we discussed was the Total Call Minutes (TCM) allocation factor adjusted to reflect off-peak usage. TCM was calculated by modifying the SLU formula to count half of the exchange holding time minutes of use in a given study area. The modified TCM plan included an off-peak discount which reduced the interstate allocation factor by 30 percent for evening minutes of use and 60 percent for night, weekend, and holiday minutes of use. The discount applied to the factor, not the interstate minutes of use. The modified TCM factor also applied to the open end of private lines terminating directly in the local public switched telephone network, and included interstate minutes of use over such facilities. This approach would apportion more NTS local exchange plant costs to the interstate jurisdiction than SLU or NUSLU but less than SPF. Assuming deregulation of CPE, but not inside wiring, the post-transition effect of this plan would be to reduce the current interstate NTS cost assignment by about 50 percent. In the discussion of this plan in the November 1982 *Order*, we noted that it would not necessarily minimize the threat of uneconomic bypass, and again pointed out that a usage based NTS allocation plan was most consistent with a usage based access charge approach.

2. Gross Assignment Methodology

22. A gross assignment allocation methodology involves use of a flat percentage interstate assignment, although the level of the assignment could range from 0 to 100 percent. Under a flat percentage assignment, a different percentage of costs could be allocated to the interstate jurisdiction for each study area or an equal percentage interstate allocation could be established for all study areas. The distinguishing feature of a flat percentage assignment is that it does not change as a result of changes in usage.

23. A flat percentage assignment allows greater stability and predictability by perventing changes in the interstate apportionment which could result from a usage based allocation. It therefore reduces incentives to manipulate usage patterns. We noted in the November 1982 *Order* that a flat percentage assignment was the separations approach most suited to use with a flat fee access charge, and would allow efficient pricing of access if the Commission discontinued per minute recovery of NTS plan costs. We also pointed out that this plan would provide relative stability in the interstate assignment, and eliminate existing concerns regarding the rapid growth of SPF.

3. Hybrid Allocation Methodology

24. A hybrid allocation methodology combines features of the flat percentage and usage based approaches. In the November 1982 *Order* we discussed the Buffered Gross Assignment (BGA) plan as one example of such an approach. This plan combined a flat percentage assignment of costs with a usage based adjustment designed to mitigate the change from SPF. It involved allocating 25 percent of NTS local exchange plant costs to interstate toll services with adjustments for areas with high SLUs or high costs. The BGA usage adjustment was a linear function of SLU, chosen so that the nationwide average interstate allocation would remain at 25 percent, although the proposed usage factor would substantially less with usage than SPF. The usage factor would require periodic downward adjustment to maintain the 25 percent nationwide average interstate allocation unless frozen SLU levels were used. If frozen SLU were used, however, this plan provided for an adjustment to reflect calendar day traffic studies and open end FX interstate minutes of use.

25. The other hybrid approach discussed in the November 1982 *Order* was referred to as NUSPF. It involved the allocation of NTS local exchange plant costs based on a frozen SPF weighted by service category. This plan separated NTS costs according to actual use, but insulted the allocation factor from usage changes caused by changing rate structures. Theoretically, this plan separated NTS costs in proportion to the actual use that would exist in the absence of measured use rate structures, approximating "customer service preference." The usage for each service employing NTS local exchange facilities would be weighted relative to flat rate service, with the new interstate allocation equal to weighted interstate use divided by total weighted use. The interstate allocation would be calculated for each study area using 1981 traffic data, and remain frozen. This approach would result in a nationwide interstate NTS allocation at approximately the current level.

26. In the November 1982 *Order* we noted that the weights used in calculating NUSPF appeared to be arbitrary and would be difficult to update. We also questioned whether pure "customer service perference" was in fact frozen over time. We further noted that this method might cause unproductive delays and distortions in modifying local rate structures to coincide with access charges.

4. Comments on Basic NTS Allocation Methodology

27. The parties filing comments in response to the Joint Board's November 1982 *Order* supported a variety of basic NTS allocation approaches. Several parties advocated gross assignment plans. These flat percentage assignment proposals ranged from a 100 percent intrastate allocation advocated by

[32] In 1970, the Bell System, which owned the vast preponderance of the nation's subscriber plant, had an interstate SLU of 5.08 percent and an interstate SPF of 16.71 percent.

[33] See paragraph 96 for a discussion of FX and CCSA/ONALS service.

Rochester Telephone Company and Continental, to a 100 percent interstate allocation proposed by SBS. Both MCI and Southern Pacific stated that they would accept a flat assignment of 25 percent to the interstate jurisdiction. USTS also supported a flat assignment approach.

28. A number of parties advocated hybrid allocation approaches. Several parties, including GTE, Centel, United and USITA, proposed allocating NTS plant on the basis of current frozen SPF. The Rural Telephone Coalition recommended continued use of frozen SPF pending resolution of access charge issues. REA supported the use of forzen SPF until access changes were in place, but proposed the use of NUSPF as a permanent allocation factor. AT&T proposed setting the interstate NTS allocation at a fixed dollar amount for two years based on the persent interstate allocation under frozen percentage SPF. The Office of Management and Budget also supported this basic approach. In addition, the Ad Hoc Telecommunications Users Committee supported use of a separations method involving a fixed dollar allocation to the interstate jurisdiciton. The Wyoming Group stated that it would recommend a fixed NTS assignment at or close to the present allocation level if the Commission adopted a flat fee access charge approach.

29. The Tennessee Commission felt that the Buffered Gross Assignment plan was the best option. The Telephone Association of New England also supported the BGA plan with the Calling Capability Factor (CCF),[34] an allocation approach based on the relative number of subscribers using each service, as its second choice. The New York State Department of Public Service supported NUSPF. The Texas Statewide Telephone Cooperative, Inc. supported a hybrid allocation approach based on SLU with a pure usage additive calculated in a manner similar to NUSPF.

30. The Kansas Commission favored NTS allocations based on an alternative cost avoidance approach, allocating costs between the jurisdictions based on the ratio of the estimated cost of separate local distribution facilities for long distance and local service. The South Dakota PUC also supported this approach. Both the Kansas and South Dakota Commissions stated that they would accept the BGA plan as an interim allocation method. The Independent Alliance supported CCF as the basis for NTS allocations but stated that they might also accept the BGA plan. A number of parties including ARINC, the California PUC, Egyptian Telephone Cooperative, Golden West Telephone Company and the Michigan Action Group favored usage based NTS allocation plans. The Wyoming Group stated that it would support a usage based approach to NTS allocations if the Commission adopted a usage based access charge.

31. The overwhelming majority of the parties filing reply comments supported some form of forzen SPF as the basic NTS allocator at least for an initial period.[35] AT&T reiterated its proposal that interstate NTS cost allocations be frozen at the present 1983 dollar level. A number of parties, including USITA, Southwestern Bell, Telephone Association of New England, Texas Statewide Telephone Cooperative, Inc., Roseville Telephone Company and Moundridge Telephone Company, favored the use of frozen percentage SPF for NTS allocations, but specifically opposed use of a frozen dollar allocation. Several parties also suggested recalculation of frozen SPF to reflect seven day traffic studies, and other proposed changes involving the treatment of FX and CCSA/ONALS service, WATS access lines and ENFIA usage. A number of these parties also took the position that the use of frozen SPF for a limited transition period should be followed by use of a flat percentate interstate assignment for all study areas. USTS and WU opposed interstate NTS assignments based on frozen SPF. IBM recommended allocating all NTS costs to the interstate jurisdiction. Roseville Telephone Company proposed the use of frozen percentage SPF for two years followed by a transition to a flat 50 percent interstate assignment. Continental abandoned its previous proposal that all NTS costs be allocated to the intrastate jurisdiction, advocating the use of frozen SPF instead. At the opposite end of the spectrum, the Louisiana PSC supported the continued use of SPF as the basic allocation factor.

C. Standards for Evaluation of NTS Allocation Options

32. As previously indicated, the most important question facing the Joint Board involves the allocation of NTS local exchange plant costs between the jurisdictions. Total NTS local exchange plant in service for the Bell System and the Independent companies represented approximately $88 billion of investment in 1981. This constituted over half of the total telephone plant in service for that year. The basic task before this Joint Board is to develop a sound NTS cost allocation methodology consistent with the Communications Act and the public interest. The generic formula[36] providing for a basic allocation factor, a high cost factor and a transition period which the Joint Board adopted in February 1982 establishes a basic framework for development of a new NTS allocation methodology. The generic formula by itself, however, provides little guidance for the selection of the factors involved.

33. In the November 1982 *Order Requesting Further Comments* we asked for comments on a list of objectives and evaluation standards proposed by the Joint Board staff for use in evluating the various NTS allocation methodologies. The Joint Board staff took the position that the new NTS allocation methodology should be designed to accomplish the following substantive objectives: (1) Establishment of an appropriate interstate allocation of NTS local exchange plant costs consistent with existing market conditions, and technological developments that would prevent undue growth in the interstate NTS allocation; (2) prevention of shifts of NTS costs to the intrastate jurisdiction that cannot reasonably be absorbed by local rate payers; (3) recognition of the needs of high cost areas; (4) assignment of costs in a manner consistent with efficient utilization of the network which minimizes the threat of unecomomic "bypass" of the local exchange; (5) ensuring compatibility with intrastate cost separations; and (6) recognition of the federal principle of promoting interstate service competition.

34. The November 1982 *Order* also expanded these basic substantive objectives into a list of eleven standards for exaluation. The standards proposed for use in evluating the various NTS allocation plans included: (1) The stability and predictability of the interstate share of NTS exchange plant costs; (2) the limited impact of these costs apportionments on intrastate revenue requirements; (3) the feasibility of using a high cost factor (HCF) with a given plan; (4) whether efficient utilization of the network is promoted and unecomomic bypass is discouraged; (5) what broad principle, if any, underlies as given plan; (6) consistency

[34] The CCF plan was proposed by the Independent Alliance composed of Roseville Telephone Company, Anchorage Telephone Utility and Northern States Power.

[35] The extent to which the parties modified their earlier positions was probably due to the fact that the Commission adopted the access charge plan after the comments were filed, but before replies were due.

[36] The generic formula is set out in footnote 19 supra.

with the proposed access charge plans such that changes in the interstate cost allocation match changes in interstate revenues; (7) the ease of administration; (8) data availability; (9) auditability; (10) suitability of the new *Manual* for state toll/exchange cost apportionments; and (11) whether the plan is consistent with interstate service competition. The Joint Board requested comments on the validity and completeness of these standards in terms of the statutory requirements of the Communications Act, public interest considerations and other relevant developments. CC Docket No. 80-286, *Order Requesting Further Comments*. CC 32408 at para. 35, released November 15, 1982.

35. While the objectives and standards for evaluation set out in the November 1982 *Order* did not generate as much discussion as certain other issues, many of the parties filing comments used these standards as a framework for analyzing the various separations proposals. Almost all of the parties that criticized the evaluation criteria focused on the absence of a specifically stated standard concerning the preservation of universal service, and the fact that priorities were not assigned to the criteria. These parties argued that the preservation of universal service should be the Joint Board's overriding concern in developing revisions to the *Separations Manual*.

36. At the Joint Board's March 17, 1983 meeting, we adopted four basic principles to govern the allocation of NTS local exchange plant cost. Specifically, we provided that any NTS allocation plan must: (1) Ensure the permanent protection of universal service; (2) provide certainty to all parties; (3) be adminstratively workable; and (4) be fair and equtable to all parties. CC Docket No. 80-286, CC 3111 at 1, released March 23, 1983. These principles generally encompass the basic concerns expressed in the objectives and evaluation standards contained in the November 1982 *Order*, although they are stated in somewhat different terms.[37] Most importantly, in light of the Commission's access charge decision, we have restated our previously expressed concerns with efficient utilization of the telephone network, prevention of uneconomic bypass of the local exchange, compatibility with interstate service competition and existing technology,[38] in terms of the principle that the NTS allocation methodology adopted must be adminstratively workable, fair and equitable in light of all relevant circumstances, including developments at the federal level such as the Commission's adoption of an access charge plan.[39] The access charge plan adopted by the Commission is intended to achieve a number of the underlying goals we expressed in the November 1982 *Order*—promotion of network efficiency, prevention of uneconomic bypass and establishment of a sound basis for development of a competitive market for interexchange service. Therefore, we can reasonably simplify our analysis of these questions by focusing on the administrative feasibility, fairness and equitable nature of the various NTS allocation methodologies when used in conjunction with the system of access charges developed by the Commission. Although the Joint Board believes that implementation of the Commission's access charge plan must be monitored carefully to ensure that the benefits anticipated by the Commission do in fact result, the access charge plan adopted by the Commission must be considered in the development of an NTS allocation methodology.

37. The objectives and evaluation criteria contained in our November 1982 *Order* as summarized in the four basic principles discussed above provide a sound basis for the development of a new basic NTS allocation methodology. They reflect the challenge which has faced the Joint Board throughout this proceeding—the development of an NTS allocation methodology that will protect universal service, *and* promote the goals of network efficiency, elimination of uneconomic bypass of the local exchange and establishment of a sound and fair environment for the development of interexchange service competition.

D. Basic NTS Allocation Methodology

1. Equal Percentage Interstate NTS Allocation for All Study Areas

38. We believe that an equal percentage interstate allocation of NTS local exchange plant costs for all study areas in conjunction with appropriate protection for subscribers in high cost areas best serves the basic objectives discussed above. Accordingly, we recommend that the Commission adopt a basic 25 percent interstate allocation of NTS local exchange plant costs for all study areas effective January 1, 1986, subject to an appropriate transition period. Frozen percentage SPF would continue to be used through the end of 1985. As discussed in more detail later in this T3Order, we recommend that the basic 25 percent interstate allocation apply to investment in inside wiring and the new Subscriber Line Outside Plant Category 1.33 which includes non-wideband loops[40] between local central offices and subscriber premises used jointly for exchange service and toll message services, excluding WATS access lines,[41] as well as the associated maintenance, and depreciation expenses, and reserves. The present frozen percentage SPF would continue to apply to CPE investment and associated expenses until CPE is completely phased out of the separations process. Phasing in a new allocation factor for the CPE amounts still subject to separations in 1986 and 1987 would simply create unnecessary administrative burdens. The existing frozen percentage SPF would also continue to apply to the allocation of NTS Category 6 COE pending review of the need for changes in the treatment of this portion of Category 6 local dial switching equipment costs as non-traffic sensitive.

39. An equal basic percentage interstate allocation of the relevant NTS plant costs for all study areas is designed to produce fair and equitable results when used in conjunction with the access charge plan adopted by the Commission as well as to protect the universal availability of telephone service by allowing rate support to be targeted to high cost areas. Neither a usage based nor a hybrid allocation methodology would produce sound results under the Commission's access charge plan or foster the targeting of rate support to high cost areas.

40. Under the Commission's access charge plan, a major portion of NTS local exchange plant costs allocated to the interstate jurisdiction through separations will be recovered directly

[37] The principle of ensuring the permanent protection of universal service encompasses the concerns reflected in the second and third objectives and the second and third evaluation criteria. The principle of ensuring certainty to all parties covers the ideas reflected in the first objective and evaluation criteria.

[38] These concerns are reflected in the first, fourth and sixth objectives and the fourth, sixth, and eleventh evaluation criteria.

[39] These two basic principles also encompass the concerns expressed in the fifth objective and the fifth, seventh, eighth, nineth and tenth evaluation criteria among others.

[40] The new basic allocation factor would also apply to Category 8 subscriber line circuit equipment associated with jointly used non-wideband local loops. Circuit equipment includes central office equipment, other than switching equipment and automatic message recording equipment, used to derive transmission channels or to amplify, modulate, regenerate, test, balance or control communications signals.

[41] The Joint Board recommends direct assignment of WATS access lines to the appropriate jurisdiction.

from subscribers in the form of flat fee access charges by the end of the transition period. The interstate allocation of CPE, inside wire and NTS Category 6 COE plant investment and expenses as well as the Universal Service Fund amount will continue to be recovered through carrier's carrier access charges. Under a usage based NTS allocation methodology, the percentage of NTS costs allocated to the interstate jurisdiction would vary widely from one study area to another. As a result, two study areas with equal NTS costs per subscriber would have substantially different interstate NTS allocations and therefore different flat fee subscriber access charges. A usage based NTS allocation methodology could produce high subscriber access charges even in areas with low costs if the interstate relative use was sufficiently high. Such a result is not equitable. A usage based NTS allocation methodology with the resulting high subscriber access charges in areas with high interstate relative use would also create a need for rate support in these areas, seriously undermining our efforts to target assistance to areas with high costs. Targeting rate support to high cost areas is very important in light of the limited amount which interexchange carriers can be required to pay through carrier's carrier access charges to help protect subscribers in these areas. If carrier's carrier access charges are too high, the interexchange carriers will turn to other means of local distribution for their traffic, bypassing the local exchange to avoid paying these charges. Using the limited funds available for rate support to assist areas with high relative interstate usage but average or low costs would reduce the amount available to assist subscribers in high cost areas.

41. A usage based NTS allocation methodology could also result in significant growth in the interstate allocation. At present, the NTS local exchange plant costs allocated to the interstate jurisdiction are recovered through the per minute charges for interstate message services. Under the Commission's access charge plan, a large portion of the interstate NTS local exchange plant costs will be recovered directly from subscribers. It is anticipated that this will allow reductions in interexchange message service rates stimulating toll calling and increasing interstate relative use. The increase in the interstate allocation which could result from a usage based allocation method would be contrary to our goals of ensuring certainty to all companies and subscribers, and maintaining a relatively stable total interstate cost allocation.

42. An increase in the nationwide interstate NTS allocation due to stimulation of interstate calling could also have a detrimental effect on the affordability of telephone service when combined with the Commission's access charge plan. An increase in interstate relative usage would result in a higher interstate NTS allocation and increased flat fee subscriber access charges. At some point, absent rate support for areas with high interstate relative use, this could cause certain subscribers to discontinue telephone service, leaving fewer subscribers from which the interstate NTS allocation could be recovered.

43. A hybrid NTS allocation plan which employed usage in determining the interstate allocation would suffer from the same drawbacks as an allocation methodology based purely on relative usage, although the problems would probably be less pronounced. Thus, a hybrid NTS allocation methodology would be preferable to a methodology based exclusively on usage. However, an equal percentage interstate allocation of the relevant NTS plant costs for all study areas is preferable to a hybrid approach.

44. An equal percentage NTS allocation for all study areas is designed to produce reasonable and fair results in conjunction with the Commission's access charge plan, and allow the targeting of rate support to high cost areas. Under such an NTS allocation methodoloy, each study area's interstate NTS allocation and the resulting subscriber access charges would be a function of the cost of service. This will produce a reasonable and equitable result when combined with rate support for areas with high costs. The fact that the basic interstate NTS allocation will be a function of costs will also allow the targeting of rate support to areas with high costs, not just high interstate NTS allocations. As previously stated, the targeting of rate support is extremely important in light of the limited amount of money which can be extracted from the interexchange carriers for this purpose without driving large users to bypass the local exchange. This allocation methodology will also produce a relatively stable nationwide interstate NTS allocation, although the allocation would increase gradually to reflect increases in NTS plant investment and associated expenses.

2. Level of Basic Interstate Allocation

45. For the reasons discussed in the previous section, we believe that SPF must be replaced by an equal percentage basic allocation for all study areas. We conclude that the level of this assignment should be set at 25 percent, which is approximately equal to the present nationwide average interstate allocation of NTS local exchange plant costs. Setting the basic allocation at this level will, on a nationwide aggregate basis, minimize the adjustments required by the transition from SPF to the new allocation methodology and preserve the relative levels of the existing intrastate and interstate allocations, although many individual study areas will experience substantial changes.

46. Wide ranging changes are presently taking place in the telecommunications industry as a result of the AT&T divestiture and the Commission's access charge decision. Although we have concluded that SPF must be replaced with an equal percentage interstate allocation for all study areas, we believe that the nationwide level of the interstate NTS allocation should not be changed at this time to avoid imposing additional implementation burdens on the industry and state and federal regulators. The replies filed in response to the November 1982 *Order* overwhelmingly supported maintenance of the status quo, although most of them were couched in terms of continued use of frozen percentage SPF. Under a separations approach involving an equal basic interstate percentage allocation of NTS costs for all study areas, we can best satisfy the desire for stability and certainty expressed in the comments by setting the basic interstate NTS allocation at 25 percent which is approximately equal to the present nationwide average interstate percentage allocation. Keeping the nationwide level of this allocation relatively constant will minimize the overall amount of change imposed on the industry as all study areas move toward use of an allocation figure which approximates the existing nationwide average.

47. Although many of the early comments in this proceeding advocated reducing the level of interstate NTS allocation, no one has presented a convincing reason to alter the basic level of the interstate NTS allocation since adoption of the Commission's access charge decision. Prior to that, the level of the interstate NTS allocation was very significant because these costs were recovered through usage based toll rates with the result that heavy toll users paid much more than their cost of connection to the network, and therefore had an incentive to bypass the local

exchange. The recovery of a major portion of interstate NTS costs through flat fee subscriber access charges will eliminate most of the problems which resulted from the SPF based interstate NTS allocation when those costs were recovered through toll rates. A few parties did suggest altering the present system to allocate all NTS costs to a single jurisdiction. These proposals met with little support from other parties, and we believe that there are serious questions concerning the legality of such approaches.

48. A number of other parties supported a fixed dollar allocation to the interstate jurisdiction, instead of a fixed percentage allocation. The net effect of this proposal over time would be an increase in the percentage of NTS plant costs allocated to the intrastate jurisdiction since no cost increases would be borne by the interstate jurisdiction. This is not consistent with our desire to maintain the existing basic nationwide division of costs. The effect of a fixed dollar allocation would also fall unequally on different companies and study areas. Areas with high growth rates would be penalized by having to absorb the full cost of connecting additonal subscribers. The fixed dollar plan would also penalize companies that wish to upgrade their facilities by dramatically increasing their intrastate allocation. As a result we do not recommend this approach.

49. The unquestionable need for a change in separations procedures has caused us to recommend an allocation method which substantially departs from the present approach. We are attempting, however, to minimize the resultant dislocations and difficulties by setting the basic NTS allocation at 25 percent. Although, we believe that this represents the appropriate interstate NTS allocation at present, development in this area should be monitored carefully so that appropriate changes can be made in the future if necessary. After implementation of the access charge decision is completed, the Joint Board and the Commission may wish to reexamine the level of the interstate NTS allocation.

3. Legality of 25 Percent Interstate NTS Allocation for All Study Areas

50. An equal percentage interstate allocation of NTS local exchange plant costs for all study areas satisfies the requirements of the Communications Act and the relevant case law concerning the separation of jointly used utility plant. Section 221(c) of the Communications Act, 47 U.S.C. 221(c) (1976), authorizes the Commission to separate telephone company plant between the jurisdictions. This section does not contain specific standards for separations, however, allowing the Commission broad discretion, consistent with the legislative purposes described in Section 1 of the Act, 47 U.S.C. 151 (1976).

51. The case law concerning the allocation of jointly used utility plant clearly recognizes the difficulty of apportioning such plant, requiring, at most, reasonable measures to reflect the dual use. In *Smith* v. *Illinois Bell Telephone Company*, the Supreme Court stated:

> While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential, * * * by some practical method the different uses of the property [must] be recognized and the return properly attributable to the intrastate service * * * ascertained accordingly.

282 U.S. 133 at 150–51 (1930). In requiring the separation of telephone company plant, the court in *Southwestern Bell Telephone Company* v. *San Antonio* stated that

> A failure to trace each of the items to its unit will not defeat their consideration. Substantial and approximate correctness is enough where perfect accuracy is not attainable.

75 F.2d 880 at 885 (5th Cir. 1935). In *Colorado Interstate Gas Co.* v. FPC, the Supreme Court elaborated on this idea, stating:

> Judgment and discretion control both the separation of property and the allocation of costs when it is sought to reduce to its component parts a business which functions as an integrated whole * * *. These circumstances illustrate that considerations of fairness, not mere mathematics, govern the allocation of costs.

324 U.S. 581 at 591 (1945).

52. A basic interstate allocation of 25 percent of the relevant NTS local exchange plant costs for each study area satisfies the requirements of the Communications Act and the relevant case law concerning the allocation of jointly used utility plant. A purely cost based allocation of this plant between the jurisidictions would be extremely difficult to develop since the cost of this plant does not vary with usage. In light of this, we conclude that the Communications Act and the relevant case law require only that the allocation of NTS plant between the jurisdictions constitute a fair and reasonable recognition of the use of this plant by both intrastate and interstate services. As discussed above, the Joint Board believes that a basic 25 percent interstate allocation of NTS plant costs for all study areas is the most fair and reasonable method of allocating NTS local exchange plant costs at present.

4. Separations Manual Language for the Basic Allocation

53. The new 25 percent basic interstate allocation for the relevant NTS costs is implemented through a new Section 23.445 which provides that, effective January 1, 1986, 25 percent of the investment in Subscriber Line Outside Plant (OSP) Category 1.33 will be allocated to the interstate jurisdiction subject to the transition period provided for in Sections 23.446 and 23.447. CPE and NTS Category 6 COE will continue to be allocated on the basis of the existing frozen percentage SPF provided for in Section 23.444(a). A new paragraph 25.112 is added to segregate station connections from other station equipment and assure that it is allocated on the same basis as OSP Category 1.33. Minor changes are also made in paragraphs 42.322, 42.323 and 42.325 to allow maintenance expenses for OSP Category 1.33 to track the plant properly. A new paragraph 42.56 is added to ensure that expenses associated with inside wiring will be allocated in accordance with the plant involved. The provisions concerning the allocation of depreciation and reserves should track the allocation of the plant involved without changes in the *Manual* language.

E. The High Cost Amount

1. Summary of High Cost Provisions

54. The Joint Board also recommends that the Commission adopt two basic measures designed to protect telephone subscribers in high cost areas. The first measure involves an additional interstate expense allocation for study areas with relevant unseparated (*i.e.* total intrastate and interstate) NTS local exchange plant costs in excess of 115 percent of the national average for these costs. The second measure involves dividing the interstate end user common line access charge revenue requirement into a subscriber access charge portion and a high cost portion so that no subscriber will have to pay an interstate access charge that is more than twice the national average. Both the additional interstate expense allocation and the high cost portion of the interstate end user common line revenue requirement will be recovered through carrier's carrier access charges.

55. The costs considered in determining eligibility for the additional interstate expense allocation as well as the level of assistance for eligible study areas include: (1) A return component or

revenue requirement for OSP Category 1.33 which includes non-wideband loops between local central offices and subscriber premises jointly used for exchange service and toll message services excluding WATS access lines; (2) maintenance and depreciation expenses associated with OSP Category 1.33; and (3) a portion of general expenses, certain other expenses and taxes proportionate to net OSP Category 1.33 investment as a percentage of total net telephone plant investment. The return component for OSP Category 1.33 is calculated using the actual debt/equity ratio for each study area, the actual cost of debt and the authorized interstate rate of return on equity. CPE, inside wire and NTS Category 6 COE are not taken into account in determining this additional interstate expense allocation.[42]

56. The level of assistance for each study area is determined by comparing each study area's relevant unseparated cost per working loop with the national average cost per working loop calculated on the basis of information which all study areas will be required to submit to the Exchange Carrier Association provided for by the Commission's access charge decision. The additional interstate expense allocation for each study area will be equal to the sum of the following times the number of working loops: (1) Fifty percent of the study area's relevant cost per working loop in excess of 115 percent of the national average, but not more than 160 percent of the national average; (2) sixty percent of the study area's relevant cost per working loop in excess of 160 percent of the national average, but not more than 200 percent of the national average; (3) seventy percent of the study area's relevant cost per working loop in excess of 200 percent of the national average, but not greater than 250 percent of the national average; and (4) seventy-five percent of the study area's relevant cost per working loop in excess of 250 percent of the national average. This calculation is performed separately from the allocation of investment, expenses and reserves pursuant to the other provisions of the *Manual*. The amount calculated pursuant to the formula described above is then subtracted from the intrastate allocation developed pursuant to the other *Manual* provisions and added to the interstate allocation as an additional expense item to be recovered through carrier's access charges under the Commission's access charge plan. By reducing the revenue requirement which a local company is entitled to claim for intrstate ratemaking purposes this will help keep intrastate rates lower than they otherwise would be.

57. The second form of protection for subscribers in high cost areas involves a division of the interstate end user common line revenue requirement calculated pursuant to Part 69 of the Commission's Rules into a subscriber access charge amount and a high cost amount. The amount included in the subscriber access charge portion will eventually be recovered directly from subscribers through flat fee interstate access charges. The high cost portion of the end user revenue requirement will be recovered through carrier's carrier access charges. The entire interstate allocation of inside wire investment and associated maintenance and depreciation will also be recovered through carrier's access charges along with the costs of CPE and NTS Category 6 COE as provided in the Commission's access charge decision.

58. The division of the interstate end user common line revenue requirement into a subscriber access charge amount and a high cost amount is accomplished by comparing each study area's end user revenue requirement per working loop calculated pursuant to Part 69 of the Commission's Rules with the national average for this revenue requirement. The interstate end user common line revenue requirement in excess of 200 percent of the national average will be included in the universal service fund amount recovered through carrier's carrier access charges. This will ensure that subscribers in high cost areas do not pay interstate end user access charges that are more than twice the national average.

2. Protection for High Cost Areas

59. We believe that eligibility for an additional interstate allocation and the amount of the allocation should be based on unseparated, *i.e.*, total intrastate and interstate OSP Category 1.33 investment and related expenses, rather than on a surrogate variable. Both of these options for the high cost factor were discussed in the November 1982 *Order*. The surrogate variable approach involves development of a regression equation that relates average costs to one or more other variables such as subscriber density per square mile or the number of subscribers per exchange. Basing the high cost amount on surrogate variables would require identification of factors that correlate with high costs, and the provision of assistance only when these factors are present. The benefit of this approach is that it helps to ensure that assistance is directed to areas where high cost levels are attributable to factors other than poor management. However, there is no single variable that fully explains the differences in NTS local exchange plant costs. Use of several variables in calculating the high cost amount would also require the development and reporting of a significant amount of information in addition to that otherwise required for separation purposes, and would greatly complicate development of the regression formula. In addition, certain study areas which have legitimate high costs would inevitably be prevented from obtaining assistance because their cost levels were not attributable to the factors included in the regression formula.

60. We believe that the additional interstate expense allocation should be based directly on costs because this approach is less complicated and will better target rate support to areas with high costs. This system does not attempt to distinguish between the causes of high costs, and there may be occasional instances where this approach will result in assistance to companies whose high cost level is due, at least in part, to poor management, but we believe that the presence of state regulation will keep these instances to a minimum. The fact that the high cost protection applies only to costs in excess of 115 percent of the national average and is based on a sliding scale, which provides only partial protection, will limit possible incentives to increase costs. This approach is also superior to the use of surrogate variables from an administrative perspective since it will involve little data beyond that already required for the basic separations process.

61. Consistent with our goal of targeting rate support to areas which have high costs, we recommend use of the actual debt/equity ratio and the actual cost of debt for each study area [43] in calculating the relevant NTS

[42] CPE is excluded in determining the additional interstate expense allocation since it is being phased out of separations. Inside wire may also be deregulated and removed from separations eventually. In addition, the portion of NTS Category 6 COE now treated as non-traffic sensitive may be recategorized as traffic sensitive. It is also important to recognize that the cost per subscriber of CPE, inside wire and NTS Category 6 COE does not vary nearly as much from company to company as the loop cost does.

[43] We recommend use of the AT&T interstate authorized rate of return on equity along with the actual capital structure and cost of debt for the sake of uniformity in light of the inherent subjectivity of establishing a rate of return on equity and the wide variation in methods for calculating such a rate of return.

local exchange plant costs. This is important because there are wide variations from company to company in the cost of debt, with some having an embedded cost of debt of less than 5 percent while others have a cost of debt which reflects the high interest rates of recent years. Failure to take this into account would undermine our efforts to direct rate support to the areas with the greatest need.

62. As previously stated, the Joint Board recommends that the rate support provided by the additional interstate expense allocation be limited to study areas with relevant NTS costs in excess of 115 percent of the national average, and based on a sliding scale which provides more protection for companies with higher costs. Both of these measures are designed to allow us to provide the maximum amount of assistance without producing economic inefficiency in the operation of the interexchange network or fostering uneconomic bypass of the local exchange. Establishing the point at which assistance to companies with costs in excess of the national average should begin involves a delicate balance between the need to insure the universal availability of affordable telephone service and the need to limit the high cost amount to a level which can be recovered through carrier's carrier access charges without resulting in economic inefficiency or uneconomic bypass. Due to the importance of this issue we requested further comments on whether assistance should be directed to companies with costs in excess of 110 percent or 120 percent of the national average in our March 1983 *Statement of Principles and Request for Further Comments*, CC 3111, released March 23, 1983. Based on the comments filed in response to this, and the other information gathered in this proceeding, we believe that limiting rate support to study areas with costs in excess of 115 percent of the national average represents the appropriate balance between these two considerations.

63. The sliding scale high cost support mechanism we recommend today will help protect the nationwide availability of telephone service at reasonable rates while limiting the amount to be recovered through carrier's carrier access charges. The sliding scale approach with a greater percentage of costs in the high cost bands allocated to the interstate jurisdiction and recovered through carrier's carrier access charges will limit support to areas with costs closer to the national average and allow maximum relief for subscribers in very high cost areas thus minimizing the costs which must be located onto interstate toll rates. This is important because providing rate support for companies with costs relatively close to the national average produces a much greater burden on the interstate jurisdiction than increasing the level of rate protection for extremely high cost companies.

64. As previously discussed, the information available to us at this time leads us to believe that the "kick in" point for high cost assistance and the sliding scale which we have chosen represent the optimal balance between the need for rate support in high cost areas and the need to avoid excessive toll loading. However, there are a number of factors at work whose impact cannot be predicted with a great degree of accuracy at this time. Only actual experience will tell whether this balance is correct. As a result, we believe that implementation of the access charge decision and the changes in jurisdictional separations must be carefully monitored so that appropriate adjustments can be made in a timely fashion if circumstances do not develop as we anticipate.

65. Division of the interstate end user common line revenue requirement calculated pursuant to Part 69 of the Commission's Rules into a subscriber access charge amount and a high cost amount is necessary to prevent unduly high flat fee subscriber access charges in high cost areas. In the case of a study area with NTS local exchange plant costs that are four times the national average, the application of the basic 25 percent interstate allocation and Part 69 of the Commission's Rules would produce an interstate end user access charge revenue requirement that is approximately four times the national average. Recovery of the entire amount of this revenue requirement through subscriber access charges would result in extremely high rates that could cause some subscribers to discontinue telephone service. Thus, the extent to which the interstate end user common line revenue requirement is to be recovered through subscriber access charges must be limited. Providing that the basic interstate end user common line revenue requirement will be recovered through carrier's carrier charges to the extent that it exceeds 200 percent of the national average appears to provide the necessary level of protection without unduly increasing the costs to be recovered through carrier's carrier charges.

3. Legality of Separations Based Protection for High Cost Areas

66. As previously mentioned, Section 221(c) specifically authorizes the Commission to separate local telephone company plant investment and expenses between the jurisdictions. Although Section 221(c) does not describe the criteria that are to be used in allocating these costs, the Commission and the Joint Board must be guided by the goals expressed in Section 1 of the Communications Act, 47 U.S.C. 151 (1976). We believe that this Section of the Act clearly sanctions consideration of the effect of separations on the universal availability of telephone service and justifies the provision of rate protection for subscribers in high cost areas. The Commission also took this position in its recent access charge decision. Our discretion to include special provisions for high cost study areas in the separations process is further bolstered by Section 4(i) of the Act, 47 U.S.C. 154(i) (1976).

4. Manual Language Concerning the High Cost Amount

67. The additional interstate expense allocation for high cost study areas and the division of the interstate end user common line revenue requirement into a high cost amount and a subscriber access charge amount is described in a new Section 6 to be added to the *Separations Manual*. Section 62.11 provides for submission of certain data to the Exchange Carrier Association to allow it to calculate national and study area average unseparated loop costs. This information may be updated on a quarterly basis at the company's option. Section 63.21 provides for calculation of the national average unseparated loop cost per working loop. Sections 63.11 and 63.22 govern calculation of the study area average unseparated loop cost per working loop. Section 64.11 provides for calculation of the amount of the additional interstate expense allocation for qualifying study areas. Parts 6 and 7 of the new Section 6 provide for division of the interstate end user common line revenue requirement into a high cost amount and a subscriber access amount.

F. Transition

68. We recommend that frozen percentage SPF continue as the NTS allocator through December 31, 1986, followed by a three year transition for most telephone companies from frozen SPF to the new basic NTS allocator of 25 percent. We believe that the maintenance of frozen SPF for two years is desirable to eliminate the need for telephone companies to deal with

jurisdictional separations changes in the first two years of the access charge transition period. Beginning January 1, 1986, each study area will move from frozen SPF to the new NTS allocator in four equal steps. The high cost additive will also be phased in in four equal steps. We recommend limiting the total annual decrease, after the amount of the high cost additive is taken into account, in the interstate allocation of OSP Category 1.33 and inside wire for any study area to ten percentage points. This will result in an extended transition to the new NTS allocator of 25 percent for companies which would otherwise face larger annual decreases, although the high cost amount will still be phased in in four equal steps for these companies. We believe that this relatively limited transition period is adequate because most companies will not face large decreases in their interstate allocations, and the extended transition period will protect companies facing extraordinary changes.

69. The rules describing the basic allocation and high cost additive transitions are found in paragraphs 23.446, 23.447, and 65.13. Paragraph 23.446 describes the transition to the new allocator for companies which do not face annual decreases in their interstate allocations exceeding ten percentage points. These companies will move one fourth closer to the new allocator each year beginning on January 1, 1986, with the new allocation plan fully effective for these study areas on January 1, 1989. Paragraph 23.447 limits the total annual decrease in the interstate OSP Category 1.33 and inside wire allocation for any study area to ten percentage points. Paragraph 65.13 describes the phase in of the additional interstate allocation for high cost areas. An equal proportion of the high cost expense adjustment will be allocated to the interstate jurisdiction each year effective January 1, 1986, with all study areas receiving their full high cost expense adjustment by January 1, 1989. The provisions for calculation of the high cost amount of the interstate end user common line revenue requirement will not be phased in over a transition period. Instead they will be effective January 1, 1986.[44]

[44] The effectiveness of this provision, however, is subject to the Commission's recent decision to limit end user access charges for residential subscribers to $2.00 in 1984, $3.00 in 1985, and $4.00 in 1986, with a $6.00 cap on end user charges for business subscribers during this period. MTS and WATS Market Structure, Phase I, FCC 83-356, released August 22, 1983.

G. Monitoring

70. As indicated above, we believe that implementation of the Commission's access charge decision and the changes in jurisdictional separations which we recommend in this *Order* must be monitored carefully to ensure that the anticipated benefits result and allow for timely adjustments if adverse effects develop. Careful monitoring of the protection for high cost areas is particularly important to ensure that the proper balance has been chosen between the need to protect subscribers in high cost areas and the need to avoid excessive toll loading. We believe that the experience and expertise developed by this Joint Board during the course of this proceeding would be of considerable assistance to the Commission in monitoring the impementation of these changes. Accordingly, we renew our recommendation, initially made in our March *Statement of Principles and Request for Further Comments*, that the Commission extend the mandate of this Joint Board to include monitoring implementation of the Commission's access charge decision and the changes in jurisdictional separations adopted in this proceeding.

71. The Commission recently issued a *Notice of Proposed Rulemaking* in the *MTS and WATS Market Structure Inquiry* containing proprosals for a plan to monitor the effect of implementation of access charges. We believe that this is a necessary and important step. We also believe that the present Joint Board can provide the Commission with valuable assistance in monitoring the effect of access charge implementation and separations changes. In particular, the state commissioners will be in a position to learn of and bring to the Commission's attention at the earliest possible date, any adverse impacts in terms of subscriber disconnection or accelerating rates of bypass as a result of their direct involvement in regulating the provision of local exchange service.

72. The Commission's access charge decision and the changes in jurisdictional separations to be adopted in this proceeding will play a major role in shaping the future development of the telecommunications industry. This sector of the economy is increasingly crucial as we move into a new information age. Although the commission's access charge decision is intended to produce significant improvements in the telecommunications marketplace, the Commission's decision involves a very delicate balancing of often conflicting goals. The same is true of the recommendations which we are making to the Commission concerning the high cost factor. The information presently available leads us to conclude that the protective mechanisms we are recommending represent the optimal balance between protection of subscribers in high cost areas and excessive toll loading. However, unforeseen changes in technology or the economy could necessitate revision of these provisions.

73. We strongly support the basic high cost provisions discussed above and believe that eligibility for assistance should be based on NTS costs (excluding CPE, inside wire, and NTS Category 6 COE), rather than on a surrogate variable such as exchange size or the number of subscribers per square mile. We believe that at present this approach produces and appropriate level of protection for telephone subscribers in most arears without excessive toll loading. However, we are concerned that this approach appears to produce anomolous results in the case of Florida which would receive over 25 percent of the total Universal Service Fund. Much of this amount would go to very large companies serving urban and suburban areas. Although we are herein making our full recommendation to the Commission concerning all of the issues remaining for resolution in this proceeding, we intend to continue studying this situation. If we determine that the level of high cost support provided to Florida or any other area is inappropriate, we will issue a supplemental recommendation to the Commission.

III. Other Separations Changes

74. In addition to the adoption of a new basic allocation factor to replace SPF and a mechanism to protect subscribers in high cost areas, a number of changes in the *Separations Manual* are required to update it and ensure consistency with the FCC's access charge plan. We recommend that these changes become effective on January 1, 1984 at the same time as the new access charge tariffs.

A. Changes in Outside Plant Classifications

75. The *Separations Manual* established two major categories of Outside Plant—exchange plant (Category 1) and interexchange plant (Category 2). We are not making any significant change in those categories apart from the creation of a new Category 3 for host-remote complexes that is described in a subsequent section of this *Order*. The exchange and

interexchange Outside Plant (or "OSP") categories in the present *Manual* basically correspond with the local access and interexchange categories in the FCC access charge plan.

76. Some minor revisions within the exchange OSP category are appropriate to achieve greater consistency with the access charge plan, however. Exchange OSP is presently divided into three categories. OSP Category 1.1 consists of transmission facilities for wideband services from the customer premises to the interexchange point of demarcation. All other plant is divided between a loop or line portion on the customer side of an end office switch (Category 1.3) and a "trunk" portion from the end office switch to the interexchange demarcation point (Category 1.2). Portions of WATS access lines and private lines that may not utilize the end office switch that serves the customer are described as "trunks" for this purpose if such portions are located on the interexchange side of the switch.

77. We are making minor revisions in the categorization of this plant to separate out wideband loops and trunks. Category 1.1 will include wideband loops. Category 1.2 will include all trunks whether wideband or non-wideband and Category 1.3 will include non-wideband loops. This categorization of exchange plant is more consistent with the access charge plant categories. These changes are implemented through revisions in Paragraphs 23.211, 23.212 and 23.213, which define Categories 1.1, 1.2 and 1.3, and through numerous revisions in other provisions that refer to these plant categories.

78. We have decided that we should not adopt proposed language that would include the voice grade central office connecting facilities (VGCOCFs) used for MTS/WATS equivalent services in Category 1.3 because such lines are classified as "transport" lines for purposes of interstate access charges and accordingly belong in Category 1.2. We do not believe that any major change is required in the definition of Category 1.2 to achieve that result because the term "toll connecting trunk" in Paragraph 23.212 should be construed to encompass transmission facilities that connect any interexchange carrier facility that is used for "message" services with an end office switch or any other switch that may serve as an "entry" switch.

79. OSP Category 1.3 presently contains four subcategories—intrastate private line, interstate private line, jointly used subscriber lines and WATS lines, and TWX lines. These subcategories will be revised to include WATS access lines with private lines in order to achieve consistency with the rate elements in the Commission's access charge plan.

80. This approach is also consistent with our tentative conclusions in the November 1982 *Order*. Although we did not make a proposal at that time concerning the apportionment of jointly used subscriber lines, we did observe that under a usage based apportionment, private lines should no longer be directly assigned. We also observed that, if direct assignment of private line costs were to continue, the rationale for direct assignment of WATS access lines would be convincing. Therefore, we deferred making a recommendation on direct assignment of private lines and WATS access lines until we chose a basic allocation methodology for non-traffic sensitive plant. We also noted that some private lines could access local exchange facilities indirectly through a PBX. Since these PBXs (leaky PBXs) could both originate and complete long distance calls, we requested comment on whether an additional allocation of NTS plant to some or all private lines would be necessary.

81. Most of the parties commenting in response to the November 1982 *Order* supported direct assignment of WATS access lines in light of the access charge decision. These included the Ad Hoc Telecommunications Users Committee, which commented that WATS access lines are just another form of dedicated facility which cannot be shared. The National Data Corporation stated that WATS access lines should be directly assigned because they provide only interstate or intrastate service, and therefore no apportionment of "shared plant" is relevant. AT&T, Southwestern Bell, Southern Pacific, and USTS also agreed with direct assignment of WATS access lines. On the other hand, the Michigan Action Group asserted that WATS access lines should be treated no differently than MTS lines because they are technically the same. Golden West Telephone Cooperative and the New York State Department of Public Service agreed that WATS access lines should be treated like MTS. GTE stated that direct assignment of WATS access lines is unnecessary under frozen SPF. United alleged that there is no need to develop a jurisdictional allocation technique to allocate costs between services.

82. Consistent with our choice of a fixed percentage allocator for NTS plant, we now recommend continued direct assignment of costs associated with dedicated facilities for private line services, and WATS access. This is one of the many changes to the *Separations Manual* which coordinates the separations process with the FCC's access charge plan. Since we have recommended an allocation methodology for NTS local exchange plant which is not based on usage, and since continuing uncertainty remains concerning the scope of the "leaky PBX" problem, we do not recommend any change in the separations process solely to cure this problem.

B. Customer Premises Equipment (CPE)

83. The November 1982 *Order Requesting Further Comments* noted that some adjustments would be required in the previously adopted plan for the phased removal of CPE from the separations process in light of the entry of the *Modified Final Judgment* [45] implementing the Justice Department—AT&T settlement announced after the Joint Board had issued its recommendations concerning the CPE phase out. The November 1982 *Order* observed:

> Under such a reorganization of the Bell System, the current CPE separations plan would create accounting anomalies since the BOCs [Bell Operating Companies] would no longer maintain any CPE in Accounts 231 and 234 to be identified for separations purposes. This would make it difficult to continue the phase-out of the settlements contribution for the BOCs and would place the customers of those companies at a disadvantage with respect to customers of independent telephone companies since an immediate cessation of the CPE-based settlements contribution after only the first year of a five-year phase-out plan would undoubtedly lead to the sort of precipitous rate increase that the plan is intended to avoid. Moreover, the present plan may lead to unintended results if CPE is retained by AT&T. The phase-out plan is structured to provide a mechanism for the gradual and measured adjustment of exchange carriers to changed economic conditions brought about by the detariffing of CPE. There is neither any need nor any intent to have such a plan operate to the benefit of an interexchange carrier. Therefore, it is clear that some modifications to the CPE plan are required.

CC Docket No. 80-286, CC 32408 at 82, released November 15, 1982.

84. The November 1982 *Order* invited comments on a proposal to combine the CPE base amount with other NTS components to produce an aggregated apportionment of "Subscriber Access Plant" that would produce the results envisioned by the CPE phaseout plan. We now believe that orderly continuation of the CPE phase out plan can be ensured despite the AT&T divestiture without these changes by addition of a new paragraph 11.251. This

[45] United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd. sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983).

will ensure that the benefits of the phase out plan continue to flow to the BOCs and prevent the development of accounting anomalies.

C. Host-Remote Complexes and Digital Electronic Switches

85. The comments that were filed in 1981 suggested revisions in the *Manual* language relating both to outside plant and to central office equipment to reflect the increased use of digital electronic switches and the use of host-remote switching complexes. The November 1982 *Order* tentatively concluded that this subject should be addressed in order to reflect technological developments that have occurred since the present *Manual* language was devised. In the November 1982 *Order*, however, we did not recommend specific language because a study was being performed by the Joint USITA-Bell Digital Technology Task Group, and its recommendation was not yet available.

86. Host-remote complexes consist of a base switching unit linked to remote offices. The base switching unit is located in a central office, and the remote offices are located some distance away. These remote units consist primarily of subscriber line terminations, and usually depend on the host's central processing unit for call processing and inter-location switching functions, although some remote units have switching capability. These complexes have developed as a reuslt of recent advances in both analog and digital switching technology. Carriers sometimes build remote offices rather than additional central offices in order to save transmission and switching costs. That choice, however, can affect toll revenues adversely.

87. The Joint USITA-Bell Digital Technology Task Group has now proposed specific changes in the *Manual* to treat host-remote complexes and digital switches explicitly. All parties commenting on this issue agreed with these proposals. AT&T supported the proposal, as did the Central Telephone Company, GTE, the Rural Telephone Coalition, USITA, and the Texas Statewide Telephone Cooperatives, Inc.

88. We recommend adoption of the Task Group proposal for treating host-remote complexes as Category 6 Central Office Equipment. This is reflected in the proposed changes to Paragraphs 24.81 and 24.812. Furthermore, we are adopting the Task Group's proposal to add the words "analog or digital" in various references to electronic switches. As another part of its proposal, the Task Group suggested creating a new category of outside plant consisting solely of facilities linking remote locations with host offices, with the associated costs allocated on the basis of minutes-of-use miles. It would exclude from this new category the outside plant linking a host office to a remote location in the same exchange if the remote location lacked switching capacity (was a "dumb" remote location). This would be treated as subscriber line outside plant. We recommend that the new category include outside plant linking all remote units with host offices. We can find no compelling reason to allocate costs associated with the plant linking a dumb remote location to a host office located in the same exchange differently from costs associated with the plant linking a dumb remote to a host office located in another exchange.

89. Therefore, we have created a new Category 3 to encompass all host-remote OSP. We are recommending the adoption of a new Paragraph 23.23 to define the outside plant category and new Paragraphs 23.231, 23.61 and 23.611 to describe the apportionment method for that plant. We also endorse the Task Group's proposed changes dealing with circuit equipment, Paragraphs 24.05 through 24.0511, and trunk testing maintenance expense, Paragraphs 42.334 and 42.336. These conform to the apportionment methods applicable to host-remote OSP.

D. Treatment of ENFIA Services

90. ENFIA (Exchange Network Facilities for Interstate Access) is the generic term describing access facilities that telephone companies provide for the origination and termination of MTS/WATS equivalent services. Inasmuch as the present *Separations Manual* was written before the introduction of competition in "message" services, the *Manual* does not contain any language that expressly describes the apportionment of facilities that are used for the provision of these services nor does it describe the treatment to be afforded these services' interstate minutes in allocating local dial switching equipment, etc. We have determined that revision of the *Manual* to reflect OSP usage by competitive message services is not necessary because we are recommending a fixed percentage allocation of commonly used subscriber lines, and because OSP Category 1.2 is described to include "toll connecting facilities," which we construe as encompassing the transport facilities for all interexchange carriers.

91. In the November 1982 *Order* we tentatively agreed with commenting parties who suggested that *Manual* provisions relating to Category 6 Central Office Equipment (COE) should explicitly recognize ENFIA use. At present the *Separations Manual* does not expressly categorize ENFIA use of exchange facilities as either interstate or intrastate, although the Interim Cost Allocation Manual (ICAM) allocates costs to ENFIA as an interstate service. Telephone companies file their interstate ENFIA tariffs or contracts with the FCC and treat ENFIA revenues as interstate.

92. By way of introduction the November *Order* reviewed the difference between ENFIA A, B and C interconnection arrangements as well as the history of the ENFIA agreement. We tentatively proposed treating all usage or dial equipment minutes (DEMs) for ENFIA A and ENFIA C like exchange service usage and therefore not applying a toll weighting factor to it when apportioning Category 6 Central Office Equipment traffic sensitive costs. This proposal was based on the conclusion that ENFIA A and ENFIA C services use local switches like exchange service. However, we concluded that we needed additional information in order to determine whether ENFIA B use of local switches was sufficiently like MTS or WATS open-end use to warrant application of a toll weighting factor. We sought comment as to whether ENFIA B services used Category 6 Central Office Equipment in a manner sufficiently similarly to MTS usage to justify application of the MTS weighting factor to ENFIA B usage, or whether ENFIA B usage required a new, smaller weighting factor. We also tentatively recommended that providers of MTS/WATS equivalent services report their raw billed interstate minutes of use to local telephone companies. We further proposed that the *Manual* incorporate a statement of principles to govern the telephone companies' use of these numbers to compute usage sensitive allocation factors.

93. In commenting on the November 1982 *Order*, Continental Telecom, Inc. agreed with our proposed treatment of ENFIA usage. AT&T said that ENFIA A, B, and C usage should be unweighted. USTS agreed with our proposal for treatment of ENFIA A and ENFIA C services. Southern Pacific argued that no weighting factor should be applied to usage generaged by any of the ENFIA services. GTE argued that ENFIA A usage should be unweighted, but that ENFIA B usage should be weighted like MTS/WATS usage, with ENFIA C usage weighted like message telephone local and toll tandem use. The New York State Department of Public Service supported weighting ENFIA B usage, as did USITA and United. The Rural

Telephone Coalition rejected the entire proposal for treatment of ENFIA as unnecessarily favorable to AT&T.

94. In view of the comments, we have concluded that no useful purpose would be served by assigning different weights to different types of ENFIA connections. We accordingly recommend the addition of a new Paragraph 24.832 that will exempt all interstate dial equipment minutes of use of Category 6 Central Office Equipment by message services other than MTS and WATS from the toll weighting factors that are applied to MTS and WATS. That section will require that all interstate use of local dial switches, including ENFIA use, be counted as interstate.

95. Although we are not specifying the portion of Category 6 Central Office Equipment that is deemed to be non-traffic sensitive or the toll weighting factors for traffic sensitive equipment, the November 1982 *Order* proposed that the words "which represent the population" be added to the references to "sampling methods." No significant objections to this proposal have been raised in the comments, and we recommend its adoption.

E. FX and CCSA Services

96. In the November 1982 *Order*, we provided the following definitions of Foreign Exchange (FX) and Common Control Switching Arrangement (CCSA) services:

117. Foreign Exchange (FX) is a partially switched private line service offering which enables a customer to place calls to telephones in a distant or "foreign" exchange without paying MTS charges. Persons in the "foreign" exchange area can also place calls to the FX subscriber without paying MTS charges or using operator assistance to make a collect call. The FX subscriber receives two bills, usually from two different carriers. The bill for the "private line" covers service from the subscriber's telephone to the termination of his "line" at the central office switch in the foreign exchange. The subscriber also receives a bill for use of local exchange facilities in the "foreign exchange" or "open end" from the local carrier providing that service.

118. A Common Control Switching Arrangement (CCSA) is a leased private telecommunications system linked by dedicated lines through large switches located on a local telephone company's premises instead of PBX switches located on the customer's premises. While the dedicated lines are for the CCSA customer's exclusive use, he shares the switches with other private line service customers. A CCSA subscriber can also obtain the Off Network Access Lines Service (ONALS), an offering that provides much the same service as FX open-end access. The CCSA/ONALS subscriber also receives one bill for its "private line" and another for origination and termination services at each "open end." In the past both FX and CCSA/ONALS subscribers have been charged for origination and termination services at the "open end" at business local exchange (B-1) rates. *But see Pacific Telephone & Telegraph*, 88 FCC 2d 934 (1981).

CC Docket No. 80-286, CC 32408 at 39, released November 15, 1982.

97. Carriers have always treated FX and CCSA/ONALS open-end revenues, expenses and investment as intrastate. However, in *New York Telephone Company*, 76 FCC 2d 349, *recon. denied*, 81 FCC 2d 128, *aff'd sub nom. New York Telephone Co. v. FCC*, 631 F.2d 1059 (2d Cir. 1980), the FCC found that local exchange service used at the open-end by interstate FX and CCSA/ONALS subscribers is part of an end-to-end interstate service subject to its jurisdiction. Thus, interstate tariffs should have included charges for such open-end access, and interstate revenue requirements should have included related costs. In the *Second Supplemental Notice* in CC Docket No. 78-72, the FCC stated that it would resolve this situation through revisions to the *Separations Manual*. The order establishing this Joint Board directed us to revise the *Manual* to provide for interstate allocation of the revenues, investment, and expenses associated with interstate FX and CCSA/ONALS usage.

98. In the November 1982 *Order*, we made tentative recommendations to ensure that interstate FX and CCSA/ONALS service would be treated as interstate for purposes of jurisdictional separations. In allocating traffic sensitive central office equipment costs, we recommended that interstate FX and CCSA/ONALS open-end *unweighted* dial equipment minutes be added to interstate toll message service dial equipment minutes, *appropriately weighted*, to detemine the share of these costs that the interstate jurisdiction would bear. We also proposed interstate assignment of expenses and revenues attributable to interstate FX and CCSA/ONALS open-end access. We also proposed the *Manual* revisions that would be necessary for interstate treatment of FX and CCSA/ONALS interstate use if we adopted a usage sensitive allocation method for NTS local exchange plant.

99. Almost all of the parties commenting on the FX and CCSA/ONALS proposals expressed support. Only the Rural Telephone Coalition objected to the plan as excessively favorable to AT&T. The New York State Department of Public Service and Golden West Telephone Cooperative agreed that all revenues and expenses associated with interstate FX and CCSA/ONALS service should be allocated interstate, but Golden West argued that FX and CCSA/ONALS dial equipment minutes should be weighted. The Ad Hoc Telecommunications Users Committee, AT&T, Continental, GTE, Southern Pacific, USITA, United, and Southwestern Bell supported the interstate allocation, as well as unweighted treatment of FX and CCSA/ONALS dial equipment minutes.

100. We recommend that the *Manual* allocate all traffic sensitive plant costs, all expenses, and all revenues attributable to interstate FX and CCSA/ONALS open-end access services to the interstate jurisdiction as the November 1982 *Order* proposed. No toll weighting factor should apply to dial equipment minutes of use attributable to interstate FX and CCSA/ONALS use of central office equipment. Such treatment is appropriate because FX and CCSA/ONALS open-end services use local dial switches in the same manner as local exchange service and competitive message services. Since we are recommending a non-usage based allocation factor for non-trraffic sensitive local exchange plant costs, there is no need to revise the *Manual* to include specific references to FX and CCSA/ONALS open-end usage in the allocation of those plant costs.

101. A new Paragraph 24.832 will be added to the *Manual* to include FX and CCSA/ONALS open-end usage in the traffic sensitive apportionment of local dial switches. That paragraph will also ensure that no toll weighting factor is applied to such usage. In addition, we recommend adding a new Paragraph 32.242 to the *Manual* in order to change the existing practice of crediting revenues from interstate FX and CCSA/ONALS open-end access service to intrastate operations. The reallocation of the interstate FX and CCSA/ONALS open end revenues, expenses and usage will become effective January 1, 1984.

F. Calendar Day of Business Day Traffic Studies

102. The November 1982 *Order* proposed changes in the usage studies performed for separations purposes. Under current separations procedures, telephone companies generally conduct five (business) day traffic studies to measure holding time minutes of use. That information is used to develop subscriber line usage (SLU) and dial equipment minutes of use. Each company typically performs annual studies for all of the central offices in a given study area. In the November 1982 *Order*, we tenatively concluded that five day studies were deficient because they ignored the traffic patterns caused by

weekend toll rate discounts. Accordingly, we tentatively recommended a requirement that all cost companies employ seven (calendar) day studies as the new methodological basis for separations usage measurements. We noted that traffic sensitive plant represents a small dollar investment compared to non-traffic sensitive plant, and therefore concluded that an immediate change to calendar day studies would not result in significant dislocations.

103. We also reached a tenative decision not to specify use of seven (calendar) day studies in the *Manual*. Instead, we tenftatively proposed insertion of the phrase "for all traffic" after the words "representative period" in Paragraph 11.212 on the ground that this language would satisfactorily establish the desired fundamental principle that traffic studies are to be based on a representative period for *all* traffic, while preserving the flexibility to accommodate different types of traffic studies in the future. We also believed such language would adequately describe an appropriate measurement methodology for services other than MTS, WATS and local exchange.

104. The comments filed in response to the November 1982 *Order* addressing this question, endorsed the concept of seven (calendar) day studies for all separations apportionment purposes that require a measurement of traffic. The comments do not present a satisfactory basis for concluding that the amendment of Paragraph 11.212 described in the November 1982 *Order* is not adequate to accomplish the desired result and we recommend adoption of that proposal.

G. Peak Period Usage

105. In the November 1982 *Order*, we also considered the possibility of using peak period traffic measurements for separations purposes. We requested comments on whether the use of peak period traffic measurements for cost allocation purposes would be unduly expensive or difficult in light of the fact that peak usage levels must be determined for engineering purposes. However, we tentatively concluded that total usage measurements should continue to be used since they appear to approximate peak period relative use. We based that conclusion on special studies which AT&T conducted and provided to NARUC in the early 1970's. Those studies revealed that substituting peak period relative use for total period relative use would produce no significant difference in the interstate revenue requirement.

106. Although AT&T argued that a new analysis would be time consuming and expensive, we tentatively decided that the cost of a new study was justifiable, given the dollar volume of the jurisdictional costs involved when both non-traffic sensitive and traffic sensitive costs are allocated based on usage. We also concluded that AT&T should begin the new study immediately so that the results would be available during the interexchange Joint Board proceeding to be instituted after completion of this proceeding.

107. The comments filed in response to the November 1982 *Order* generally opposed the performance of a new peak period traffic study. USITA, Continental, the New York Department of Public Service, Golden West Telephone Cooperative, GTE, United, Ad Hoc Telecommunications Users Committee, and AT&T argued against a new peak period traffic study. Only the Michigan Action Group and the Independent Alliance favored a new study. The fact that we have recommended a fixed percentage allocation methodology for NTS local exchange plant sharply reduces the magnitude of the costs affected by a change in usage measurements. As a result, we no longer believe that the benefits of a new peak period traffic study outweigh its costs, and we are not recommending that AT&T prepare a new comparative impact study.

H. A More Open Separation Process

108. In the November 1982 *Order*, we sought comments on possible modification of the current process for administering separations. We tenatively concluded that the current system under which AT&T played a leading role in administering the separations process needed to be revised due to increased competition, and elimination of the division of revenues process mandated by the *Modified of Final Judgement* in the AT&T antitrust case. Our objectives were: (1) To adapt the traditional jurisdictional separations and settlements process to the new telecommunications environment; and (2) to improve the separations implementation process through public access to information and rapid impartial resolution of *Manual* related disputes.

109. We proposed to introduce a more open separations process through the creation of an information bank to provide separations data to interested parties on a cost compensatory basis. We also proposed establishment of a technical body to recommend solutions to disagreements concerning separations. The comments on these issues were very divided. Although there was considerable support for a more open separations process, many of the commenting parties, particularly telephone companies, were opposed to divulging proprietary information. In fact this was the major objection to the proposal. The parties also disagreed concerning the need for or desirability of a technical staff to resolve disputes. Some of the parties suggested that the exchange carrier association established pursuant to the Commission's access charge decision could perform this function.

110. We now recommended that the FCC consider the establishment of a separations information bank at some time in the future. While we strongly endorse the principle of open separations, we believe that we lack adequate information concerning the data the bank should keep, and how the bank should be administered. We recommended that the FCC resolve these matters outside the context of this Joint Board proceeding. Such a course of action is permissible since these matters do not involve the separation of plant costs between the jurisdictions.

111. We have also concluded that creation of a Federal-State technical staff to resolve separations related disputes is undesirable. We believe that an additional layer of review prior to final resolution of separations disputes by the FCC, would produce few benefits and could needlessly delay final decisions. We are also concerned that the related expense might be excessive. While input from state regulators concerning these issues is important, we believe that the states can make their views known through other channels.

I. Business Relations Expense and Revenue Accounting Expense

112. In the November 1982 *Order*, we noted that AT&T's proposals for changes in the allocation of these two expense categories appeared to discriminate between AT&T and other interexchange carriers, and recommended rejection of the AT&T proposals. AT&T then revised its proposals to overcome our objections. While the new Revenue Accounting Expense proposal no longer seems to treat other carriers differently than AT&T, it is inconsistent with the FCC's access charge decision. While this is understandable due to the timing of the two proceedings, we cannot recommend the change in light of the access charge scheme adopted. It lumps all of these expenses into a single access category, intermingling costs which should be

allocated to various access components. As a result, it does not represent an improvement over the current method, and might in fact be a step in the wrong direction. Due to this we do not recommend changing the current *Manual* language.

113. We do not believe that the new Business Relations Expense proposal is convincingly supported. Changing the method of allocation, from the relative number of state versus interstate business contacts to the relative number of state versus interstate messages, would appear to do nothing to aid in the development of carrier access charges. In fact, it would seem to confuse the costs of customer (specifically, business customer) access with carrier access in the scheme set out in the access charge decision. Until access charges are in effect, it is difficult to gauge the need for these changes. Therefore, we do not recommend any action to change the current separations practices at this time.

J. Advertising and Sales Expenses and the LATA Concept

114. In its comments in response to the November 1982 *Order*, AT&T added two new proposals to the changes which it had previously suggested for Revenue Accounting Expense and Business Relations Expense. Under the title "Modified Final Judgment Related Modifications," AT&T proposed changes concerning advertising and sales expenses and a proposal to deal with the exchange/interexchange categorization of circuit plant costs which essentially would add the LATA concept to the *Separations Manual*. We do not recommend adoption of either of these proposals. The modification in the procedures for apportioning Advertising and Sales Expenses would be inconsistent with the Commission's access charge rules. Although some changes in the existing apportionment may be warranted, we have not received any proposals which appear to be appropriate. We also recommend rejection of the proposal for adding the LATA concept to the *Manual*. Companies already should know that some interexchange plant will be intra-LATA, and, contrary to AT&T's contention, they will not be confused by this situation. The term "LATA" is also specific to AT&T and the Bell Operating Companies and should not be included in the *Manual*, which is intended for use by all companies.

K. Other Changes Proposed for the Separations Manual

115. In the November 1982 *Order*, we discussed a number of technical changes in the *Manual* proposed by various parties. Only a few of these items generated any comments or controversy. In this section we adopt most of the changes discussed in the November 1982 *Order*. In most cases the rationale for adopting these changes is the same as that set out in the November 1982 *Order*. A few of these proposals generated some degree of controversy or were reintroduced in a revised form after the November 1982 *Order*. These matters are discussed in more detail here. For convenience, we will follow the format and numbering plan of the November 1982 *Order*.

1. Exchange Trunks

116. The revisions in the description of OSP Category 1.2 plant discussed above supersede the proposals described in the November 1982 *Order*.

2. Land and Buildings Simplification

117. The proposal for land and buildings simplification would eliminate the weighting of manual central office equipment costs used in allocating Operating Room and Central Office Equipment Space (Category 1). The weighting accounts for the fact that manual switching and circuit equipment occupy different amounts of space per dollar of equipment costs than dial switching and automatic message recording equipment. AT&T argued that the advent of electronic office equipment has eliminated the need for this weighting. AT&T estimated that this change will transfer $750,000 of Bell System revenue requirements from the interstate to the intrastate jurisdiciton. We recommend adoption of this proposal changing Paragraph 22.321 of the *Manual*.

3. Direct Assignment Principle

118. We recommend adding a new Paragraph 11.26 to Section 1 of the *Manual* which will allow direct assignment to the appropriate jurisdiction of costs which have previously been identified as interstate or intrastate. This change will accommodate instances where a company provides services to a second company and identifies the billed amounts for those services as interstate or intrastate. Rather than book these amounts to the appropriate accounts and then apportion them between the jurisdictions according the *Manual*, the amounts would be directly assigned. This change is non-controversial, and AT&T estimates that it will not shift revenue requirements between the jurisdictions. We endorse this proposal since it will simplify the separations process at least in a small way and recommend that the FCC adopt the proposed new Paragraph 11.26.

4. Extended Area Service (EAS)

11.9. In the November 1982 *Order*, we concurred with AT&T's suggestion for direct assignment of the costs of extended area service to the local exchange. These costs appear in Account 644, Connecting Company Relations Expense, and Account 675, Other Expenses. Golden West objected to adoption of AT&T's recommendation, arguing (as USITA had earlier) that an EAS call is an interexchange call and should be treated as such. Continental and GTE agreed with the proposal. We reject Golden West's arguments on the same basis that we rejected USITA's arguments in the November 1982 *Order*. EAS is an exchange service, not an interexchange service. We recommend the direct allocation of EAS costs to exchange service, and propose revisions to Paragraphs 45.41 and 47.212 and the addition of Paragraph 45.414 to implement this change.

5. Property Tax Apportionment

120. This proposal would modify the separations treatment of property taxes in Account 307. Property taxes are now apportioned based on the separation of the cost of Telephone Plant in Service, Account 100.1. This proposal would allow property taxes levied solely on portions of Telephone Plant in Service to be apprortioned on the basis of the separation of the property upon which the tax is levied. This change provides the option of more closely relating tax allocations to the allocation of the plant being taxed. This is a noncontroversial change which would transfer about $2 million of Bell System revenue requirements to the interstate jurisdiction. We recommend that the FCC adopt implementing language changing Paragraph 49.31.

6. Weighted Standard Work Seconds (WSWSs)

121. In the November 1982 *Order*, we rejected AT&T's proposal to use Standard Work Seconds (SWSs) instead of Traffic Units as an apportionment method. This rejection applied to all areas in which it was proposed including manual switchboards, operators' quarters, operator-related TSPS costs, operator work time associated with the provision of directory assistance service, certain traffic expenses in accounts 624, 627 and 631 and number service record work expenses in account 624. We rejected the AT&T proposal primarily because SWSs do not include an allowance for

waiting-to-serve time, an important consideration in non-electronic offices.

122. In commenting on our November 1982 *Order* AT&T revised its proposals, recommending the use of weighted standard work seconds designed to take into account the impact of waiting-to-serve time. AT&T noted that appropriate weighting would consider waiting-to-serve time and that SWSs, rather than traffic units are used on an industry-wide basis for administrative purposes. UTS and GTE also recommend use of SWSs with weighting to reflect waiting-to-serve time. GTE points out that although final allocation results are the same as traffic units, traffic units require a conversion of SWSs.

123. We recommend that the FCC adopt the use of WSWSs since it is a simplification of traffic units and will accommodate both the newer and older levels to office technologies. This change will affect paragraphs 11.212, 11.22, 22.322, 24.32, 24.331 and 24.334, and Section 4, Part 4 of the *Separations Manual*. A definition of "weighted standard work second" also is added to the Glossary.

7. TSPS Processor Use

124. AT&T initially proposed basing operator-related TSPS (Traffic Services Position System) central office equipment cost allocations on SWSs, but using processor real time to allocate the costs of TSPS stored program control, memory and remote trunk arrangements. In the November 1982 *Order*, we rejected the proposed used of SWSs for the reasons stated above, but tentatively accepted the use of processor real time as the basis for allocating the remaining TSPS costs. We did so based on AT&T's statements that portions of the TSPS investment now operate independently of operator involvement. AT&T, supported by United, subsequently proposed that operator-related TSPS costs be allocated on the basis of WSWSs. GTE argued that AT&T should be required to demonstrate a correlation between processor real time and remote trunk investment usage. Continental objected that the language in the proposal should be broadened to include non-Western Electric equipment by using the universal phrase "Program Controlled Traffic Services Positions" (PCTSP).

125. As stated above, we now recommend the use of WSWSs in the allocation of operator related TSPS costs. We also believe that AT&T has properly justified real time as a basis for the remaining allocation and we see no need to deviate from our earlier recommendation as a result of GTE's comments. We see no real need to change the reference from TSPS to PCTSP as Continental suggested. The acronym TSPS is commonly used and is so broadly understood in the industry that it can be considered a generic term. As a result, we see no reason to delete the term from the *Manual*. These actions require changes in Paragraph 11.22(3)(a) of the *Manual* and the Glossary, as well as the addition of a new Paragraph 24.35.

8. Revision of Directory Assistance Traffic Units

126. Operator work time associated with the provision of Directory Assistance Service is currently segregated based on whether the directory assistance call was received over a local trunk or a toll trunk. It is then separated among the operations by traffic units. AT&T initially proposed the use of SWSs and elimination of the classification based on the type of incoming trunk. It also proposed to specify that directory assistance investment includes switchboards, computers, and call distribution equipment. Furthermore, it proposed the use of the applicable tariff to determine the jurisdiction to which a call should be attributed. We rejected all of these changes in the November 1982 *Order*. AT&T then resubmitted these proposals, substituting WSWSs. United stated that it found this proposal acceptable. GTE had also supported the use of WSWSs earlier in the proceeding. As noted above, we recommend that the Commission adopt this part of the change. Paragraphs 24.331 and 44.121 of the *Manual* are revised to accomplish this.

9. Intercept

127. This change would modernize the *Manual* to recognize that intercept investment no longer consists of switchboards, but instead involves automated systems which do not include operators or switchboards. AT&T stated that this change should have no effect on Bell System jurisdictional revenue requirements. We recommend that the Commission adopt changes in Paragraphs 24.332 and 44.122 of the *Manual* implementing this proposal.

10. Network Administration

128. Network administration expenses in Accounts 621 and 624 are incurred in the administration of dial switching equipment operations. These expenses are now separated on the basis of relative numbers of traffic units. This proposal would base the allocation method on the separation of the related dial switching equipment in Central Office Equipment Categories 1 through 7. AT&T projects that this change would produce a shift of $60 million in revenue requirements to the intrastate jurisdiction. We recommend that the Commission adopt this proposal by changing Paragraphs 44.22, 44.41, 44.44, 44.441 and 44.442 of the *Manual*.

11. Modification for Special Services

129. In the November 1982 *Order*, we proposed that the *Manual* be changed to allow private line expenses in Account 622 to be allocated to private line services. The *Manual* now prohibits this. We recommend that the Commission adopt this proposal, since the commenting parties generally agreed with it, and it would conform the *Manual* to industry practice. Changes in Paragraphs 44.31 and 44.352 of the *Manual* are proposed to implement these changes.

12. Service Observing Expense

130. AT&T now wishes to call this portion of Account 622 "service evaluation expense," and change the way in which it is allocated. We rejected this change earlier on the same basis we rejected standard work seconds (SWSs), *i.e.*, that waiting to serve time was not reflected. AT&T now proposes a weighting factor to overcome our objections. United expressed its willingness to accept this change. We believe that the new proposal resolves the problems which we had discussed in the November 1982 *Order*. We recommend adoption of the proposal, which modifies Paragraph 44.32 of the *Manual*. We also accept AT&T's recommendation to modernize the *Manual*'s terminology and refer to this category as "Service Evaluation."

13. Determination of Exchange

131. The *Manual* currently allocates certain traffic expenses in Accounts 624, 627 and 631 by individual exchange, unless certain conditions apply. In that case the expenses may be apportioned by groups of exchanges. In the November 1982 *Order*, we endorsed AT&T's proposal to allocated Account 624 and 627 expenses by individual switchboard, and Account 631 expenses by study area. Nevertheless, as explained above, we rejected the use of SWSs as the new basis for allocating these expenses. AT&T then proposed the use of WSWSs. United expressed its support for the new proposal. While GTE accepted the use of WSWSs, it argued that it could not identify its Account 624 and 627 expenses by individual switchboard due to its "record-keeping systems and work force rotation between switchboards." GTE

added that "eliminating the option of allocation by groups of exchanges in favor of individual switchboards could force revisions to record keeping systems that would otherwise be unnecessary." We agree with GTE that the old method should be kept as an option. Therefore, as explained above, we propose to change Part 4, Section 4 only to reflect the use of WSWSs.

14. Wage and Hour Differential Ratio

132. In order to allocate certain types of operator wages, the *Manual* calls for detailed studies to develop weighting factors which account for unusual traffic patterns or wage differentials. In the November 1982 *Order*, we recommended elimination of these weighting factors and the associated studies on the ground that they were no longer necessary. Only GTE argued against the proposed change, noting that performing a wage and hour differential study is optional. GTE contended that it should be up to the company to decide whether such a study is needed and it urged that Paragraph 44.442 of the *Manual* remain unchanged. GTE has provided no substantial reason for allowing such discretion. We therefore reject GTE's proposal and recommend elimination of Paragraph 44.442.

15. Number Services Record Work

133. This proposal would disaggregate expenses in Account 624 into directory assistance, intercept, and calling card service. It would then apportion directory assistance and intercept expenses on the basis of WSWSs. Calling card service expense would be allocated based on credit card messages. We believe that this classification should be disaggregated, particularly to remove the mechanized service (calling card) expenses from the operator related expenses. We recommend that the FCC adopt the revised AT&T proposal and make the appropriate changes to Paragraph 44.45 of the *Manual*.

16. Rest and Lunch Rooms—Dining Services

134. This proposal would require that this expense in Account 626 be apportioned at the study area level, instead of separately for each exchange or group of exchanges as is the current practice. Consistent with our decision in "Determination of Exchanges" above, we now agree with GTE's argument that companies should have the option of whether to apportion by exchange or groups of exchanges or by study area. While United supported our November 1982 recommendation to accept the proposed change, there is no inconsistency between our present and earlier positions if we retain the option inherent in the current system. Therefore, we do not recommend that the FCC adopt this proposal.

17. Space Used by Another Company for Interstate Operations

135. The property in Building Category 5 is currently assigned directly to the interstate jurisdiction. GTE recommended that Category 5 be modified for multiple jurisdictional use. We previously recommended rejection of this proposal. GTE said, however, that it has twelve study areas that furnish land and building space to another company for both interstate and intrastate use, and that it now allocates that space by relative use. United supported the direct assignment of costs whenever possible and urged rejection of this proposal, nothing that Category 5 was established specifically for direct assignment of space to interstate operations. We are not persuaded by GTE's arguments, and affirm our recommendation in the November 1982 *Order* that the FCC reject GTE's suggested changes.

18. Outside Plant Simplification—Cable Conversion

136. The *Manual* now requires that outside cable plant be converted to equivalent 19 or 22 gauge pairs. However, GTE has pointed out that this conversion is necessary only when there is a mixture of gauges in a sheath or complement. Paragraph 23.3111 should be modified to remove the requirement that the equivalence be stated in 19 or 22 gauge. There will be no jurisdictional revenue requirement effect from this change. We recommend that the FCC adopt this proposal to change Paragraph 23.3111 of the *Manual*.

19. Plant Furnished to Another Company

137. GTE stated that it will submit this proposal to the future interexchange Joint Board as we suggested in the November 1982 *Order*. Therefore, we will not consider this issue here.

20. Material and Supplies

138. GTE had originally proposed that the basis for allocating Account 122 be changed from the apportioned cost of outside plant in service to the apportioned cost of central office equipment, large PBX equipment, and outside plant in service. It reasoned that Account 122 included central office and large PBX equipment. However, GTE has decided not to pursue this matter in light of the phase out of CPE. United continued to suggest language to allocate amounts in Account 122 associated with specific plant accounts according to the underlying plant account allocations. It agreed that the remainder in Account 122 could be allocated according to the separation of outside plant in service. Continental also continued to contend that revisions were necessary. It noted that even if large PBX equipment were phased out of the separations process, "the inclusion of central office equipment material and supplies in Account 122 is ample reason to adopt GTE's suggested change." We remain unconvinced that any changes are needed in the allocation of this category. We believe that the current method is sufficient to accommodate the concerns expressed by Continental and United. The fact that GTE withdrew its own proposal supports our decision to recommend that the FCC reject this change.

21. Test Desk Work—Trunk Testing

139. GTE stated that it will resubmit this proposal to the future interexchange Joint Board.

22. Interest Charged Construction

140. GTE resubmitted, with additional support, an earlier proposal to revise the *Manual* so that interest charged construction would be apportioned in a manner that was consistent with the basis on which the interest was accrued. AT&T supported this proposal but offered different language. United also supported GTE's proposal and offered a third proposed wording. Nevertheless, all agreed that the *Manual* should incorporate this methodology. Although we had tentatively recommended rejection in the November 1982 *Order*, we now agree that such a change is necessary. Since the differences in the various proposals do not appear to be significant, we recommend that the FCC adopt our proposed revisions to Paragraph 33.21.

23. Investment Credits—Net

141. Account 304, Investment Credits—Net, curently is segragated first between amounts associated with station connections and amounts associated with other plant accounts. The amounts associated with station connections then are allocated on the basis of apportioned station connections. The remaining amount is allocated on the basis of separated telephone plant in service excluding station connections. GTE proposed that the segregation between station connections and other plant should be eliminated and the total amount of investment credits should be allocated on the basis of separated telephone

plant in service. We agree that segregating the investment credits between station connections and other plant accounts is unnecessary. We recommend that this change to Paragraph 33.11 be adopted by the FCC.

24. Interest Not Related to Capital Obligations

142. AT&T proposed "clarifying language" for the *Manual* to ensure that these charges would be allocated consistent with the apportionment of the individual item that caused the interest expense. In the November 1982 *Order* we tentatively concluded that this change was not needed. United and GTE have agreed. Although AT&T subsequently resubmitted its proposal with more supporting information, we still believe that no change is needed in this category. AT&T did not substantially improve the proposal which we found wanting in the November 1982 *Order*. We recommend that the FCC reject AT&T's proposal.

25. Separations Study Expense

143. United and Gold West agreed with our rejection of this GTE proposal to assign all costs of separations studies directly to the interstate and intrastate toll operations only. Since GTE has decided not to pursue this proposal now, we are not recommending any action in this area.

26. Other Operating Taxes

144. In the November 1982 *Order*, we proposed to treat franchise taxes in Account 307 as a separate item and apportion them based upon the apportionment of the accounts upon which they were levied. Such treatment is consistent with the apportionment of gross receipt taxes, social security taxes, and certain property taxes. United agreed with a separate classification for franchise taxes, but did not comment on the overall method of apportionment. GTE disagreed with the method of apportionment proposed in the November 1982 *Order*. It argued that franchise taxes should be allocated based on the apportionment of telephone plant in service. AT&T believed that our modification was unnecessary. It noted that establishing a separate classification for franchise taxes "would require extensive analysis since accounting records do not exist that have the necessary detail. * * *" We agree that our earlier proposal could have imposed a significant burden on many companies. As a result we have reconsidered our proposal, and recommend no change in the existing allocation method.

27. Central Office Power Equipment

145. The *Separations Manual* now allocates the cost of Central Office Equipment (COE) not assigned to any specific category in proportion to the cost of equipment directly assigned to categories. Central office power equipment used by only one category of COE is directly assigned to that category. Power equipment directly assigned to a specific category may either use the central 48 volt power supply as its power sources or rely upon a stand alone power source. GTE proposed to change Paragraph 24.1311 to specify that the cost of power equipment used by one category should be directly assigned to that category before the costs of common central office equipment are distributed among the categories. In the November 1982 *Order*, we proposed a change in Paragraph 24.131 which would permit the simplified study procedures GTE sought. Based upon the comments we have received, we now recommend that Paragraph 24.131 be revised as we proposed previously.

28. COE Emergency Power Equipment

146. The *Separations Manual* now distributes the cost of fixed emergency power equipment on the same basis as the cost of the power equipment it protects. It distributes the cost of portable emergency power plant among the categories based on the assignment of the costs of all other COE in the study area. GTE proposed that the *Separations Manual* treat portable emergency equipment as it now treats such fixed equipment. Cost causation principles appeared to support GTE's proposal. We believe, however, the result GTE sought could be achieved by deleting Paragraphs 24.1313 and 24.1314 and treating the costs of emergency power equipment the same as all other central office power equipment. In the November 1982 *Order*, we solicited comments concerning: (1) Whether there were any practical reasons for continuing to distinguish in the *Manual* between emergency power equipment and the remaining central office equipment; (2) the costs and benefits of changing the *Manual*; and (3) whether either of the two proposals would achieve the intended result. Based upon the comments we received, we now recommend that Paragraphs 24.1313 and 24.1314 be deleted, and Paragraphs 24.131 and 24.1311 be revised as proposed in the November 1982 *Order*.

29. Technical Wording Changes

147. In its June 1981 filing, AT&T suggests 46 pages of revisions to the *Manual* which would delete references to obsolete equipment and services, etc. We recommend adoption of these changes with four exceptions. AT&T argued that we were mistaken in our November 1982 recommendation that these four items be deferred to the future interexchange Joint Board. AT&T recommended that the following three questions be taken up now: (1) Centralized Ticket Investigation (CTI); (2) Rate and Route Switchboard Investment; and (3) Foreign Directory Expenses. Other parties also recommend disposition of CTI, and AT&T noted that the two remaining issues were small or noncontroversial.

148. Foreign Directory Expense is the expense associated with directories and traffic information records prepared for one locality and used in another. The changes proposed for Foreign Directory Expense in Account 649 would reflect the fact that AT&T now charges customers for out-of-town (foreign) telephone directories. This modification would address the expense incurred by the company which purchased the foreign directories. It would not address foreign directory expense incurred by the company which produced the directories.

149. AT&T recommended modification of the current procedure for treating Rate and Route Switchboard Investment in Account 221 to eliminate the grouping of Rate and Route switchboards with toll switchboards. The costs of Rate and Route switchboards would be allocated based on Rate and Route switchboard weighted standard work seconds (WSWSs). AT&T claimed that this change was necessary to apportion costs associated with centralized Rate and Route functions. It claimed that Rate and Route operations were generally centralized and could not be associated with one or a few toll switchboards.

150. Centralized Ticket Investigation Expenses in Account 624 include the wages of employees engaged in investigation activities in a centralized toll ticket investigation bureau. This modification would separate the toll ticket investigation expense on the basis of the volume of toll messages. Continental and United have also urged us to consider this matter.

151. We believe that our previous recommendation that consideration of these matters be deferred to the interexchange Joint Board was proper, because they are interexchange in nature. This is also true of the fourth item, Interexchange Circuit Plant. We invite the parties to resubmit these proposals at the appropriate future time.

152. Finally, Alascom stated that it still uses the *Manual* for the jurisdictional separation of TWX investiment in Alaska. We will accordingly reinstate the proposed deletions of references to TWX.

153. As stated previously, other technical wording changes recommended in the November 1982 *Order* have been entirely non-controversial, and we recommend that the FCC adopt them.

IV. Ordering Clause

154. Accordingly, the Joint Board recommends, that the commission adopt the attached revisions to the *Jurisdictional Separations Manual* implementing the changes discussed above.[46]

William J. Tricarico,

Federal Communications Commission.

Appendix A—Separations Manual Revisions

1. Amend Paragraphs 11.212 and 11.22 (3)(a) to read as follows:

11.212 In the development of "actual use" measurements, measurements of use are: (1) Determined for telephone plant or for work performed by operating forces on a unit basis (*e.g.*, conversation-minute-mile per message, weighted standard work seconds per call) in studies of traffic handled or work performed during a representative period for all traffic and (2) applied to overall traffic volumes, *i.e.*, 24-hour rather than busy-hour volumes.

11.22(3a) Operator work time expressed in weighted standard work seconds in the basis for measuring the use of manual switching plant, except for that portion of traffic service position system (TSPS) investment that is not directly associated with operator positions. Real time (i.e., actual seconds) use of the TSPS processor is the basis for measuring the use of this plant, which inludes the stored program control, memory and remote trunk arrangement (RTA).

2. Add a new Paragraph 11.251 which reads as follows:

11.251. The procedures described in Paragraphs 11.25, 25.3, 42.55, 43.112, 47.211 and 51.22 shall apply for purposes of interstate apportionment of customer premises equipment for companies that provide exchange service regardless of the actual CPE attributable to regulated operations that is recorded on the books of the company. If the amount apportioned to interstate operations exceeds the amount of CPE attributable to regulated operations, the excess shall be deducted from the total investment or total expense apportioned to state operations. Notwithstanding the transfer of CPE from the BOCs to AT&T pursuant to the AT&T diverstiture,[47] responsibility for continuation of the five year phaseout of the interstate allocation of CPE shall remain with the BOCs.

3. Add a new Paragraph 11.26 which reads as follows:

11.26 Costs which have once been separated under procedures consistent with general principles set forth in this Manual, and are thus identifiable as entirely interstate or intrastate in nature, shall be directly assigned to the appropriate operation and jurisdiction.

4. Amend Paragraph 22.231 and 22.322 to read as follows:

22.231 Operating Room and Central Office Equipment Space—Category I—This category includes the space used by central office equipment (*e.g.*, circuit equipment, toll and local switchboards, including traffic service positions, operating rooms, dial switching equipment, automatic message recording equipment, power plants, cable vaults, and space used by personnel when installing or maintaining central office equipment). The cost of this space, excluding space used or reserved for another company's interstate operations as described in Paragraph 22.122, is apportioned among the operations in proportion to the separation of the cost of the following types of central office equipment:

(a) Manual switchboard equipment
(b) Circuit equipment
(c) Dial Switching equipment

22.322 Operators' Quarters—Category 2—This category includes space (other than operating rooms) used by switchboard operators, *e.g.*, operators' lounges and lunch rooms. The cost of this space is apportioned among the operations on the basis of the relative number of weighted standard work seconds for all switchboards involved.

5. Amend Paragraph 23.21 to read as follows:

23.21 Exchange Outside Plant—Category 1—This category includes the outside plant other than in Category 3 in the following three subcategories:

6. Amend Section 23.211 to read as follows:

23.211 Wideband Subscriber Line Outside Plant—Category 1.1—This category includes the outside plant between local central offices and subscriber premises used for wideband services.

7. Amend Paragraph 23.212 to read as follows:

23.212 Exchange Trunk Outside Plant (Wideband and Non-Wideband)—Category 1.2—This category includes outside plant between central offices or other switching points used by any common carrier for interlocal trunks wholly within an exchange or metropolitan service area, interlocal trunks carrying extended area service traffic, interlocal trunks with one or both terminals outside a metropolitan service area carrying some exchange traffic, toll connecting trunks, tandem trunks principally carrying exchange traffic, the exchange trunk portion of TWX and WATS access lines, the exchange trunk portion of private line local channels, and the exchange trunk portion of circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

8. Amend Paragraph 23.213 to read as follows:

23.213 Subscriber Line Outside Plant Excluding Wideband—Category 1.3.—This category includes outside plant between local central offices and subscriber premises used for message telephone and TWX subscriber lines, for WATS access lines, for private line local channels and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service. This category also includes outside plant between local central offices and public telephones.

9. Amend Paragraph 23.22 to read as follows:

23.22 Interexchange Outside Plant—Category 2—This category includes outside plant other than that included in Categories 1 and 3, used for message toll and toll private line services. It includes outside plant carrying intertoll circuits, tributary circuits, the interexchange channel portion of special service circuits, circuits between control terminals and radio stations used for overseas or coastal harbor service, interlocal trunks between offices in different exchange or metropolitan service areas carrying only message toll traffic and certain tandem trunks which carry principally message toll traffic.

10. Amend Paragraphs 23.23 and 23.231 which read as follows:

[46] All of the proposals and arguments not discussed herein have been considered and rejected.

[47] The Modified Final Judgement in United States v. AT&T, 552 F. Supp. 131, *affid sub. nom.* Maryland v. U.S. 51 U.S.L.W. 3628, February 28, 1983 generally requires AT&T to divest itself of its operating companies which provide local telephone service.

23.23 Host/Remote Message Outside Plant—Category 3—This category includes the cost of message host/remote location outside plant for which a message circuit switching function is performed at the host central office. It applies to outside plant facilities between host offices and all remote locations.

23.231 The procedures for apportioning the cost of Category 3 host/remote outside plant among the operations are set forth in Paragraph 23.6.

11. Amend Paragraph 23.3111 to read as follows:

23.31111 There are two basic methods for assigning the cost of cable to the various categories. Both of them are on the basis of conductor cross section. The methods are as follows:

(a) By section of cable, uniform as to makeup and relative use by categories. From an analysis of cable engineering and assignment records, determine in terms of equivalent gauge the number of pairs in use, or reserved, for each category. The corresponding percentages of use, or reservation, are applied to the cost of the section of cable, *i.e.*, sheath feet times unit cost per foot, to obtain the cost assignable to each category.

(b) By using equivalent pair miles, *i.e.*, pair miles expressed in terms of equivalent gauge. From an analysis of cable engineering and assignment records, determine * * * [leave the rest of the section as it is].

12. Amend Paragraph 23.42 to read as follows:

23.42 Wideband Subscriber Line Outside Plant—Category 1.1—The cost of outside plant assignable to this category in the study area is determined separately for each wideband subscriber line outside facility and assigned to the appropriate subsidiary category as follows:

Category 1.11 Subscriber line outside plant for interstate private line services.

Category 1.12 Subscriber line outside plant for intrastate private line services.

Category 1.13 Subscriber line outside plant for wideband message services.

13. Amend Paragraph 23.421 to read as follows:

23.421 The costs in Categories 1.11 and 1.12 are each assigned directly to the appropriate operation. The cost in Category 1.13 is segregated by type of wideband transmission facility and is apportioned between state and interstate operations on the basis of the relative number of minutes of use of each type of wideband facility in the study area.

14. Amend Paragraphs 23.43 and 23.44 to read as follows:

23.43 Exchange Trunk Outside Plant (Wideband and Non-Wideband)—Category 1.2—The cost of the exchange outside plant assignable to this category in the study area is separately identified for the following subsidiary categories:

Category 1.21 Trunk plant used exclusively for exchange message services.

Category 1.22 Trunk plant used exclusively for toll message services (excluding trunks used exclusively for WATS access) or jointly for exchange and toll message services.

Category 1.23 Trunk plant used for TWX access lines.

Category 1.24 Trunk plant used exclusively for interstate private line services and exclusively for interstate WATS access.

Category 1.25 Trunk plant used exclusively for state private line services and exclusively for interstate WATS access.

23.44 Subscriber Line Outside Plant Excluding Wideband—Category 1.3—The first step in apportioning the cost of the subscriber line outside plant among the operations is the determination of an average cost per working loop. This average cost per working loop is determined by dividing the total cost of subscriber line outside plant assigned Category 1.3 in the study area by the sum of the working loops described in subcategories 1.31, 1.32, 1.33 and 1.34. The cost of the subscriber line outside plant assigned Category 1.3 is further assigned to the following subsidiary categories and apportioned in accordance with Paragraphs 23.441—23.444:

Category 1.31 Subscriber line outside plant used exclusively for state private line services and exclusively for state WATS access.

Category 1.32 Subscriber line outside plant used exclusively for interstate private line services and exclusively for state WATS access.

Category 1.33 Subscriber line outside plant used jointly for exchange service and toll message services, excluding WATS access lines.

Category 1.34 Subscriber line outside plant used for TWX service.

15. Amend Paragraphs 23.441 and 23.442 to read as follows:

23.441 The cost of subscriber line outside plant assigned Category 1.34 for the study area is determined by multiplying the average cost per loop determined in Paragraph 23.44 by the number of working subscriber lines used in furnishing TWX service. The amount so assigned is apportioned between state toll and interstate toll on the basis of the relative number of TWX minutes of use for the study area.

23.442 The average subscriber line outside plant cost per loop determined in Paragraph 23.44 is applied to the counts of working loops used in furnishing state and interstate private line local channels (excluding wideband) and state and interstate WATS access, and the amounts so determined are assigned to categories 1.31 and 1.32 and are assigned directly to the appropriate operations.

16. Amend Paragraph 23.443 to read as follows:

23.443 The cost of subscriber line outside plant assigned Category 1.33 is determined by subtracting amounts assigned TWX service, private line and WATS access services in Paragraphs 23.441 and 23.442 from the total cost assigned Category 1.3 in the study area.

17. Amend Paragraphs 23.444 to read as follows:

23.444(a) The cost of subscriber line outside plant category 1.33 is apportioned between date and interstate in operations until January 1, 1986, by the application, to the cost of such plant, of a subscriber plant factor, which is the sum of the following:

(1) Annual average interstate subscriber line use (SLU), for the calendar year 1981,[46] representing the interstate use of the subscriber plant as measured by the ratio of interstate holding time minutes of use to total holding time minutes of use applicable to traffic originating and terminating in the study area, multiplied by .85, the nationwide ratio of (1) subscriber plant costs assignable to the exchange operation per minute of exchange use to (2) total subsciber plant cost per total minute of use of subscriber plant plus

(2) Twice the annual average interstate subscriber line use ratio for the study area for the calendar year 1981,[46] miltiplied by the annual average composite station rate ratio used for the calendar year 1981 (ratio of (1) the nationwide, industry-wide average interstate initial 3-minute station charge at the study area average interstate length of haul to (2) the nationwide, industry-wide average total toll initial 3-minute station charge at the nationwide

[46] In the case of a compar.y that cannot calculate the average interstate subscriber line usage (SLU) ratio for the calendar year 1961, the average interstate SLU for the customarily used 12-month study period ending in 1981 may be utilized. In the case of a company for which no such 1981 annual average SLU exists, the annual average interstate SLU for the initial study period will be utilized.

average length of haul for all toll traffic for the total telephone industry).

(b) Effective January 1, 1986, the plant in OSP Category 1.33 shall be apportioned between the state and interstate operations as provided in Paragraphs 23.445–233.447.

18. Add new Paragraphs 233.445–23.447 which read as follows:

23.445 Effective January 1, 1986, 25 percent of the plant investment in OSP Category 1.33 will be allocated to the interstate operation, except as otherwise provided in Paragraphs 23.446–23.447.

23.446 The interstate allocation of OSP Category 1.33 plant investment for the years 1986, 1987 and 1988 will be as follows, subject to the limitation contained in Paragraph 23.447:

(a) 1986—The Section 23.444(a) allocation factor multiplied by .75 plus .0625.

(b) 1987—The Section 23.444(a) allocation factor multiplied by .5 plus .125.

(c) 1988—The Section 23.444(a) allocation factor multiplied by .25 plus .1875.

23.447 Limit on Change in Interstate Allocation.

(a) No study area's percentage interstate allocation for inside wire and OSP Category 1.33 plant investment as well as associated maintenance and depreciation shall decrease by the total of more than ten percentage points from one calendar year to the next as a result of the combined operation of Paragraphs 23.445, 23.446 and 65.1 through 65.13.

(b) The determination of whether the decrease in the interstate allocation for given study areas resulting from the operation of Paragraphs 23.446 and 65.1 through 65.13 exceeds ten percentage points shall be made by calculating a percentage interstate allocation for both of the years involved. This shall be done by dividing the interstate allocation of OSP Category 1.33 and inside wire plus associated expenses for each year as calculated pursuant to Paragraph 23.447(d) by the total unseparated investment in OSP Category 1.33 and inside wire plus associated expenses for the corresponding year as calculated pursuant to Paragraph 23.447(e).

(c) If the resulting percentage for the more recent of the two years is more than ten percentage points less than the percentage for the earlier year, the decrease in the interstate allocations shall be reduced pro rata for plant investment, maintenance and depreciation so that the difference between the two percentages does not equal more than ten percentage points.

(d) Add the following:

(1) the net interstate allocation of OSP Category 1.33 plant investment calculated pursuant to Paragraphs 23.445 and 23.446 multiplied by the authorized interstate rate of return.

(2) the net interstate allocation of inside wire calculated pursuant to Paragraphs 23.445 and 23.446 multiplied by the authorized interstate rate of return.

(3) the interstate allocation of maintenance and depreciation attributable to OSP Category 1.33 and inside wire investment calculated pursuant to Paragraphs 23.445 and 23.446.

(4) The amount of the additional interstate expense allocation calculated pursuant to Paragraphs 65.1 through 65.13.

(e) Add the following:

(1) the net unseparated OSP Category 1.33 plant investment multiplied by the authorized interstate rate of return.

(2) the net unseparated inside wire investment multiplied by the authorized interstate rate of return.

(3) the unseparated maintenance and depreciation attributable to OSP Category 1.33 and inside wire investment.

19. Add new Paragraphs 23.6 through 23.611 which read as follows:

23.6 Host/Remote Message Outside Plant Category and Apportionment Procedures

23.61 Host/Remote Message Outside Plant—Category 3—The cost of host/remote outside plant used for message circuits, i.e., circuits carrying only message traffic, is included in this category.

23.611 The cost of host/remote message outside plant for the study area is apportioned on the basis of the relative number of study area minutes-of-use miles applicable to such facilities.

20. Amend Paragraphs 24.131 and 24.1311 to read as follows:

24.131 The cost of common equipment not assigned to a specific category, e.g., power equipment, including emergency power equipment, aisle lighting and framework, including distributing frames, is distributed among the categories in proportion to the cost of equipment, including power equipment, directly assigned to categories.

24.1311 The cost of power equipment used by one category is assigned directly to that category, e.g., 130 volt power supply provided for circuit equipment. The cost of emergency power equipment protecting only power equipment used by one category is also assigned directly to that category.

Delete Paragraphs 24.1313 and 24.1314.

22. Amend Paragraph 24.32 to read as follows:

24.32 The cost of the following telephone switchboards is apportioned among the operations on the basis of the relative number of weighted standard work seconds handled at the switchboards under consideration.

23. Amend Paragraphs 24.331 and 24.332 to read as follows:

24.331 The cost of separate directory assistance boards is apportioned among the operations on the basis of the relative number of weighted standard work seconds handled at the boards under consideration. Directory assistance weighted standard work seconds are apportioned among the operations on the basis of the classification of these weighted standard work seconds as follows:

(a) Directory assistance weighted standard work seconds first are classified between calls received over toll directory assistance trunks from operators or customers and all other directory assistance calls.

(b) The directory assistance weighted standard work seconds of each type further are classified separately among the operations on the basis of an analysis of a representative sample of directory assistance calls of each type with reference to the locations of the calling and called stations for each call.

24.332 The cost of separate intercept boards and automated intercept systems in the study area is apportioned among the operations on the basis of the relative number of subscriber line minutes of use.

24. Amend Paragraph 24.334 to read as follows:

24.334 Where more than one auxiliary service is handled at an auxiliary board, the cost of the board is apportioned among the auxiliary services on the basis of the relative number of weighted standard work seconds for each service. The cost of that part of the board allocated to each auxiliary service is apportioned among the operations in the same manner as for a separate auxiliary board.

25. Add a new Paragraph 24.35 which reads as follows:

24.35 Traffic Service Position System investments are apportioned as follows:

(a) Operator position investments are apportioned on the basis of the relative weighted standard work seconds for the entire TSPS complex.

(b) Remote trunk arrangement (RTA) investments are apportioned on the basis of the relative processor real time (*i.e.*, actual seconds) required to process

TSPS traffic originating from the end offices served by each RTA.

(c) The remaining investment at the central control location, such as the stored program control and memory, is apportioned on the basis of the relative processor real time (*i.e.*, actual seconds) for the entire TSPS complex.

26. Amend Paragraph 24.81 to read as follows:

24.81 Local dial switching equipment comprises all dial central office switching equipment not assigned other categories. Examples of local dial switching equipment are basic switching train, toll connecting trunk equipment, interlocal trunks, tandem trunks, terminating senders used for toll completion, toll completing train, call reverting equipment, weather and time of day service equipment, concentration equipment, and switching equipment at electronic analog or digital remote line locations.

27. Add a new Paragraph 24.812 to read as follows:

24.812 A host/remote local dial switching complex is composed of an electronic analog or digital host office and all of its remote locations. A host/remote local dial switching complex is treated as one local dial office. The current jurisdictional definition of an exchange will apply.

28. Amend Paragraph 24.821 to read as follows:

24.821 The segregation of the cost of local dial switching equipment is accomplished in each local dial office by the application of a non-traffic sensitive equipment factor appropriate for the particular type of equipment (step-by-step, panel, crossbar, electronic-analog or digital, etc.) installed in the office and for the size of the office. The non-traffic sensitive factors are developed by means of analyses of the cost of local dial switching equipment in selected local dial offices which are representative of the several types and size ranges and which are chosen for study by sampling methods which represents the population.

29. Amend Paragraph 24.83 by substituting "Paragraph 23.444(a)" for "Para. 23.444."

30. Amend Paragraph 24.831 to read as follows:

24.831 The weighted toll dial equipment minutes of use applicable to each office are developed by application of a weighting factor appropriate for the particular type of equipment (step-by-step, panel, crossbar, electronic-analog or digital, etc.) installed in the office, the size of the office, and whether or not a majority of the traffic originated in the office also terminates in the office. The weighting factors for application to the toll minutes of use are developed by means of analyses of the traffic sensitive local dial switching equipment in local dial offices selected for study by sampling methods which represent the population. The analyses of the traffic sensitive items of equipment are made in sufficient detail to reflect the use of each item of equipment for exchange and for toll services.

31. Add a new Paragraph 24.832 which reads as follows:

24.832 Dial equipment minutes of use attributable to the origination or termination of interstate message services other than MTS and WATS that use local dial switching facilities shall be counted as interstate minutes of use, but shall not be deemed to be toll dial equipment minutes of use for purposes of the weighting factor described in Paragraph 24.831.

32. Amend Paragraph 24.02 to read as follows:

24.02 For apportionment among the operations, the cost of circuit equipment is assigned to the following subsidiary categories which are consistent with those established for outside plant:

(a) Exchange Circuit Equipment—Category 8.1.

(1) Wideband Exchange Loop Circuit Equipment—Category 8.11.

(2) Exchange Trunk Circuit Equipment (Wideband and Non-Wideband)—Category 8.12.

(3) Subscriber Line Circuit Equipment Excluding Wideband—Category 8.13.

(b) Interexchange Circuit Equipment—Category 8.2.

(1) Interexchange Circuit Equipment Furnished to Another Company for Interstate Use—Category 8.21.

(2) Interexchange Circuit Equipment Used For Wideband Services—Category 8.22.

(3) All Other Interexchange Circuit Equipment—Category 8.23.

(c) Host/Remote Message Circuit Equipment—Category 8.3.

33. Amend Paragraphs 24.031, 24.032 and 24.033 to read as follows:

24.031 Wideband Exchange Loop Circuit Equipment—Category 8.11—The cost of exchange circuit equipment in this category is determined separately for each wideband facility. The respective costs are allocated to the appropriate operation in the same manner as the related exchange loop outside plant as described in Paragraphs 23.42 and 23.421.

24.032 Exchange Trunk Circuit Equipment (Wideband and Nonwideband)—Category 8.12—The cost of exchange circuit equipment associated with this category for the study area is assigned to subcategories and is allocated to the appropriate operation in the same manner as the related exchange trunk outside plant is described in Paragraphs 23.43 and 23.431.

24.033 Subscriber Line Circuit Equipment Excluding Wideband—Category 8.13—The cost of Circuit Equipment associated with exchange subscriber line plant excluding wideband for the study area is assigned to subcategories and is allocated to the appropriate operation in the same manner as the related Subscriber Line Outside Plant for non-wideband service as described in Paragraphs 23.44 through 23.447.

34. Delete Paragraphs 24.0321, 24.0322 and 24.0331 through 24.0332.

35. Add Paragraphs 24.05, 24.051 and 24.0511 which read as follows:

24.05 Apportionment of Host/Remote Message Circuit Equipment Among the Operations.

24.051 Host/Remote Message Circuit Equipment—Category 8.3. This category includes message host/remote location circuit equipment for which a message circuit switching function is performed at the host central office associated with outside plant Category 3 as defined in Paragraph 23.23.

24.0511 The category 8.3 cost of host/remote circuit equipment assigned to message services for the study area is apportioned among the exchange, intrastate toll, and interstate toll operations on the basis of the relative number of study area minutes-of-use-miles applicable to such facilities.

36. Add a new Section 25.112 which reads as follows:

25.112 The first step in the separation of station equipment is the segregation of station connections in Accounts 232 and 234 from all other investment. This plant is apportioned between the state and interstate operations on the same basis as OSP Category 1.33 described in Paragraphs 23.444 and 23.447.

37. Amend Section 25.12 to read as follows:

25.12 The next step is the assignment of the remaining plant to the five categories listed below and the determination of the cost of the plant so assigned. The basic procedures followed in making the assignments and cost determinations are (a) the identification of the units of stations equipment installed on customers' premises assignable to Categories 1, 2, 3 and 4, (b) determination of the related costs in these categories by the application of an

appropriate average unit cost to the units so identified, and (c) the assignment of the remaining station equipment cost to Category 5.

38. Add Paragraph 32.242 to read as follows:

32.242 Revenues that are attributable to the origination or termination of interstate FX or CCSA like services shall be assigned to the interstate jurisdiction.

39. Amend Paragraph 33.11 to read as follows:

33.11 Amounts in this account are apportioned among the operations on the basis of the separation of the cost of Telephone Plant in Service—Account 100.1.

40. Amend Paragraph 33.21 to read as follows:

33.21 Interest charged to construction is apportioned among the operations on the basis of the apportionment of the cost of the portion of Telephone Plant Under Construction, Account 100.2, on which the interest charged to construction was accrued.

41. Amend Paragraphs 42.322 and 42.323 to read as follows:

42.322 Expense in this classification is segregated among (a) message services (excluding WATS access), (b) WATS access, (c) private line, (d) TWX and (e) wideband services, on the basis of the relative number of working subscriber loops provided for each of these services. In cases where substantial numbers of private line, WATS access, TWX or wideband service loops are provided, and where either the analyses in Paragraph 42.31 or analyses of trouble reports on private line, WATS access, TWX and wideband services indicate that the exchange circuit plant testing expense per loop associated with any of such services is significantly different from the corresponding expense per loop associated with message services (excluding WATS access), appropriate weighting factors are applied to the counts of loops used for private line, WATS access, TWX and wideband services. These weighting factors are based on periodic analyses of accounting or other records for a representative period.

42.323 Subscriber line and service order testing expense assigned message telephone (excluding WATS access) is apportioned between state and interstate operations on the same basis as that used for the apportionment of the cost of OSP Category 1.33.

42. Amend Paragraph 42.325 to read as follows:

42.325 Exchange circuit plant testing expense assigned private line services and WATS access are apportioned among the operations on the basis of the relative number of working loops (weighted if appropriate) used in furnishing exchange, state toll, interstate toll and WATS access private line local channels.

43. Amend Paragraph 42.334 to read as follows:

42.334 The expense of testing all other inter-office circuit plant is further segregated among (a) exchange trunk plant, (b) interexchange circuit plant, and (c) host/remote message circuit plant on the basis of the relative number of circuit miles provided for each of these classifications in the study area. In cases where substantial numbers of circuit miles are provided for TWX service, WATS access, or private line services (other than wideband special services) or exchange trunks, and where analyses of trouble reports or other records indicate that the testing expense associated with any of these classifications is significantly different from the corresponding expense per circuit mile associated with message interexchange service (excluding WATS access) circuit miles, appropriate weighting factors are applied to the counts of circuit miles for individual classifications to recognize this difference in testing expense. These weighting factors are based on periodic studies of charges to Account 603 for interoffice circuit plant testing during a representative period.

44. Add a new Paragraph 42.336 which reads as follows:

42.336 Host/Remote message circuit plant testing is apportioned among the exchange, intrastate toll, and interstate toll operations on the basis of study area minutes-of-use-miles.

45. Add a new Paragraph 42.56 which reads as follows:

42.56 Inside Wiring Installation Expense—Expenses associated with the installation of inside wiring shall be apportioned between state and interstate operations in accordance with the applicable factor for OSP Category 1.33 plant provided for in paragraphs 23.444 through 23.447).

46. Amend Section 4, Part 4 to read:

44.1 General.

44.11 Traffic expenses are included in the following accounts:

General Traffic Supervision—Account 621
Service Inspection and Customer Instruction—Account 622
Operators' Wages—Account 624
Rest and Lunch Rooms—Account 626
Operators' Employment and Training—Account 627
Central Office Stationery and Printing—Account 629
Central Office House Service—Account 630
Miscellaneous Central Office Expenses—Account 631
Public Telephone Expenses—Account 632
Other Traffic Expenses—Account 633
Joint Traffic Expenses, Dr.—Account 634
Joint Traffice Expenses, Cr.—Account 635

44.12 In general, traffic expenses are apportioned among the operations on the basis of the relative number of weighted standard work seconds. For this purpose, certain groups of weighted standard work seconds are apportioned among the operations as follows:

44.121 Directory assistance weighted standard work seconds at separate auxiliary service boards are apportioned among the operations on the basis of the classification of these weighted standard work seconds as follows:

(a) Directory assistance weighted standard work seconds first are classified between calls received over toll directory assistance trunks from operators or customers and all other directory assistance calls.

(b) The directory assistance weighted standard work seconds of each type further are classified separately among the operations on the basis of an analysis of a representative sample of directory assistance calls of each type with reference to the locations of the calling and called stations for each call.

44.122 Intercept weighted standard work seconds in the study area are apportioned among the operations on the basis of the relative number of subscriber line minutes-of-use applicable to each operation in the study area.

44.13 For some traffic expense accounts one set of factors is used to apportion the entire expense in the account among the operations. For other accounts the expense is segregated into two or more classifications and is apportioned separately for each classification. Some companies maintain subaccounts consistent with the specific classifications.

44.14 Traffic expense in each account or classification is apportioned among the operations separately for each exchange except where:

(a) it is difficult to determine the expense for individual exchanges,

(b) some exchanges have relatively small amounts of expense, or

(c) some exchanges have comparable cost levels or comparable portions of the operations.

Where any of the above conditions apply, the expense may be apportioned among the operations for groups of exchanges. A group of exchanges may include all exchanges in the study area.

44.15 For the purpose of this section "total weighted standard work seconds" includes an allowance for TWX when allocation to TWX is necessary.

44.2 General Traffic Supervision—Account 621.

44.21 Engineering—The expense of employees engaged in traffic engineering is apportioned among the operations on the basis of the apportionment of the combined cost of Central Office Equipment—Account 221 and Interexchange Outside Plant in Accounts 241 through 244.

44.22 Network Administration—The expense of employees engaged in traffic administration of dial switching equipment operations is apportioned among the operations on the basis of the apportionment of the cost of Central Office Equipment in Categories 1 through 7.

44.23 All Other—All other expense included in this account is apportioned among the operations on the basis of the relative number of total weighted standard work seconds.

44.3 Service Inspection and Customer Instruction—Account 622.

44.31 The expense in this account is ordinarily segregated into four classifications or subaccounts: (1) Service evaluation (2) private branch exchange, (3) TWX, and (4) customer instruction and miscellaneous.

44.32 Service Evaluation.

44.321 This classification includes the expense of traffic service evaluation forces engaged in evaluating the handling of message telephone traffic, in summarizing service evaluation data, and in directly supervising such work.

44.322 The expense is apportioned between exchange and toll for a study area on the basis of the relative number of exchange and toll service weighted evaluation seconds.

44.323 The toll expense is then apportioned on a study area basis between state and interstate operations on the basis of the relative number of toll minutes of use for each operation.

44.33 Private Branch Exchange.

44.331 This classification includes the expense of employees engaged in inspecting private branch exchange service and directly supervising such work. This includes the taking of observations of private branch exchange service, other than service observations by the regular service observing forces, and the expense of employment and instruction of private branch exchange operators when performed by the private branch exchange service organization.

44.332 The expense in this classification for the study area is apportioned among the operations on the basis of relative amounts of current billing excluding billing to non-affiliated telegraph companies and other telephone companies as determined by an analysis for a representative period.

44.34 Teletypewriter Exchange Service.

44.341 This classification includes the expense of employees engaged in inspecting or observing the handling of teletypewriter exchange service. It also includes the expense of training customers' personnel for such service.

44.342 The expense in this classification for the study area is apportioned between state toll and interstate toll operations on the basis of the relative number of state and interstate TWX traffic units or weighted standard work seconds.

44.35 Customer Instruction and Miscellaneous.

44.351 This classification includes the expense of employees engaged in instructing customers in methods of placing calls, in taking special observations in connection with the handling of individual service criticisms, and in similar activities.

44.352 Expense in this classification for the study area is apportioned among the operations on the basis of the relative amounts of current billing excluding billing to other telephone companies as determined by an analysis for a representative period.

44.4 Operators' Wages—Account 624.

44.41 For apportionment purposes, the following classifications of expense included in this account are considered: (1) Private branch exchange, (2) teletypewriter exchange, (3) network administration, (4) number services record work, and (5) all other.

44.42 Private Branch Exchange.

44.421 This classification includes the expense of private branch exchange operating and clerical employees.

44.422 Expense in this classification is first divided between that incurred in connection with the operation of private line service switchboards and all other.

44.4221 Expense incurred in connection with the operation of private line service switchboards is apportioned among the operations, by locations, on the same basis as that used for the apportionment of the cost of the private line service switchboards operated (See Paragraph 24.95).

44.4222 All other expense in this classification for the study area is apportioned among the operations on the basis of the relative number of subscriber line minutes-of-use in the study area.

44.43 Teletypewriter Exchange.

44.431 This classification includes the expense of teletypewriter exchange operating and clerical employees.

44.432 Expense in this classification is apportioned between state toll and interstate toll operations, by locations, on the basis of the relative number of state and interstate TWX traffic units or weighted standard work seconds.

44.44 Network Administration.

44.441 This classification includes the expense of switching administration, data administration, transmission administration, line and number administration, trunk administration and general administration and training for all of these functions.

44.442 Expense in this classification for the study area is apportioned among the operations on the basis of the apportionment of Central Office Equipment in Categories 1 through 7.

44.45 Number Services Record Work.

44.451 This classification includes the expense of updating and maintaining records for directory assistance, intercept, and calling card service functions.

44.452 Expense in this classification is first divided between directory assistance, intercept, and calling card service for the study area.

44.453 The expense incurred for the directory assistance function is apportioned among the operations for a study area on the basis of the weighted standard work seconds generated by the directory assistance offices in the study area.

44.454 The expense incurred for the intercept function is apportioned among the operations for a study area on the basis of the weighted standard work seconds generated by the intercept offices in the study area.

44.455 The expense incurred for the calling card service function is apportioned among the operations for a study area on the basis of the credit card messages for the study area.

44.46 All Other.

44.461 The expense in this classification is apportioned among the operations by exchanges or groups of exchanges on the basis of the relative number of weighted standard work seconds at each exchange or group of exchanges.

44.4611 Where an exchange has a separate toll payroll, or payrolls, the

weighted standard work seconds consistent with the payroll, or payrolls, for each toll office are used to apportion the total expense for that office. The total weighted standard work seconds for all other offices may be used to apportion the totals of the separate payrolls for these other offices.

44.5 Rest and Lunch Rooms—Account 626

44.51 Dining Service—This classification includes the expense of operating lunch rooms for traffic department central office employees. Included are salaries of employees engaged in the operation of lunch rooms, associated house service expense, expenditures for food supplies, and other miscellaneous related expense, less lunch room receipts. This expense is apportioned among the operations separately for each exchange or for groups of exchanges on the basis of the relative number of total weighted standard work seconds in the exchange or group of exchanges.

44.52 All Other—The remaining expense in this account for the study area is apportioned among the operations on the basis of the relative number of telephone plus TWX weighted standard work seconds.

44.6 Operators' Employment and Training—Account 627

44.61 Teletypewriter Exchange Training—The expense of traffic employees, both instructors and trainees, incurred while attending a training course in TWX operating and clerical work is apportioned between state and interstate operations on the basis of the relative number of TWX weighted standard work seconds for the study area.

44.62 All other—The remaining expense in this account is apportioned among the operations separately for each switchboard, exchange or group of exchanges on the basis of the relative number of the telephone weighted standard work seconds applicable to each operation at the switchboard, exchange or group of exchanges. However, where significant proportions of both exchange traffic and outward toll traffic are handled at the same switchboard or group of switchboards, the weighted standard work seconds used for their apportionment must be additionally weighted. The weighing factors applied to the weighted standard work seconds for this purpose are derived by assigning a weight of one to all local operator weighted standard work seconds and an appropriate relative weight to all toll operator weighted standard work seconds. This toll weighing factor is based on periodic studies of the relative training requirements.

44.7 Central Office Stationery and Printing—Account 629; Central Office House Service—Account 630; Miscellaneous Centeral Office Expenses—Account 631

44.71 The expense in Accounts 629 and 630 for the study area is apportioned among the operations on the basis of the relative number of total weighted standard work seconds.

44.72 The expense in Account 631 is apportioned among the operations separately for each exchange or group of exchanges on the basis of the relative number of total weighted standard work seconds in the exchange or group of exchanges.

44.8 Public Telephone Expenses—Account 632

44.81 The expense incurred at attended pay stations handling toll to completion is assigned to toll, and is apportioned between state and interstate operations on the basis of the relative number of state toll and interstate toll weighted standard work second at each location.

44.82 The remaining expense in this account for the study area is apportioned among the operations on the basis of the relative number of study area subscriber line minutes-of-use.

44.9 Other Traffic Expenses—Account 633

44.91 Settlement Amounts—Amounts of settlements for traffic operating services performed by other companies re apportioned among the operations on bases consistent with the nature of the operating services.

44.92 All Other—All other expense in this account for the study area is apportioned among the operations on the basis of the relative number of total weighted standard work seconds for the study area.

44.0 Joint Traffic Expenses—Dr. — Account 634; Joint Traffic Expenses — Cr. — Account 635

44.01 Amounts in these accounts are apportioned among the operations on bases consistent with the nature of the traffic operating services received or provided.

47. Amend Paragraph 45.41 to read as follows:

45.41 The expense in this account is first assigned to (a) message toll telephone service excluding WATS access, (b) TWX service, (c) private line services and WATS access, and (d) extended area services (EAS) on the basis of an analysis during a representative period of the net settlement amounts associated with each of these services. This analysis excludes settlements with affiliated telephone companies and with non-affiliated telegraph companies.

48. Add a new Paragraph 45.414 which reads as follows:

45.414 Extended area service (EAS) expense is directly assigned to the exchange operation.

49. Amend Paragraph 47.212 to read as follows:

47.212 The second group consists of the expenses included in Accounts 668, 669, the engineering expense portion of Account 665 and the expenses included in Account 675, excluding extended area services (EAS) settlements, which are directly assigned to the exchange operation. Expenses in this group are apportioned among the operations on the basis of the separation of the cost of Telephone Plant in Service—Account 100.1, excluding the cost of plant assigned general office space and costs included in Accounts 201, 202, 203, 276 and 277.

50. Amend Paragraph 49.31 to read as follows:

49.31 Property Taxes—These taxes are apportioned among the operations on either (a) the basis of the separation of the cost of Telephone Plant In Service—Account 100.1 or (b) the basis of the separation of the cost of the property upon which the tax is levied. The latter apportionment shall be employed only in instances where property taxes are levied on portions of Telephone Plant In Service.

51. Add new Section 6 which reads as follows:

Section 6 Universal Service Factor

Part 1—General

61.1 General.

61.11 For purposes of Section 69.501(a) of the Rules of the Federal Communications Commission, the Universal Service Factor portion of the interstate apprortionment shall consist of an expense adjustment computed in accordance with this Section and the high cost portion of the interstate end user common line revenue requirement developed pursuant to Part 69 of the Federal Communications Commission rules also computed in accordance with this Section. The expense adjustment will be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to Section 4. Part 7 of this Section identifies a portion of the interstate end user common line revenue requirement developed pursuant to Part 69 of the Commission's Rules as a Universal Service Factor assignment.

61.12 The expense adjustment will be computed on the basis of data for a preceding calendar year which may be updated at the option of the carrier pursuant to Paragraph 62–21. The high cost portion of the end user common line revenue requirement shall be computed on the basis of projected revenue requirements developed pursuant to Part 69 of the Commission's Rules.

Part 2—Data Collection

62.1 Submission of Information to the Exchange Carrier Association.

62.11 In order to allow determination of the study areas which are entitled to an expense adjustment or the designation of a high cost portion of the interstate end user common line revenue requirement, each local telephone company must provide the Exchange Carrier Association established pursuant to Part 69 of the Commission's Rules with the information listed below for each of its study areas. This information is to be filed with the Association on June 30th of each year beginning in 1985. The information filed on June 30th of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October.

(a) Unseparated, *i.e.*, state and interstate, gross plant investment in Outside Subscriber Line Plant (OSP) Category 1.33. This amount shall be calculated as of December 31st of the year preceding each June filing.

(b) Unseparated depreciation reserve and accumulated deferred federal income taxes attributable to OSP Category 1.33 investment. These amounts shall be calculated as of December 31st of the year preceding each June filng, and shall be stated separately.

(c) Unseparated depreciation expense attributable to OSP Category 1.33. This amount shall be the actual depreciation expense for the calendar year preceding each June filing.

(d) Unseparated maintenance expense attributable to OSP Category 1.33. This amount shall be the actual maintenance expense for the calendar year preceding each June filing.

(e) Unseparated general expenses, other operating expenses in Accounts 671, 672 and 674, and taxes. The amount for each of these categories of expense shall be the actual amount for that expense for the calendar year preceding each June filing. The amount for each category of expense listed shall be stated separately.

(f) Unseparated gross telephone plant investment. This amount shall be calculated as of December 31st of the year preceding each June filing.

(g) Unseparated depreciation reserve and accumulated deferred federal income taxes attributable to total unseparated telephone plant investment. This amount shall be calculated as of December 31st of the year preceding each June filing.

(h) The number of working subscriber line outside loops used jointly for non-wideband exchange and message telephone service, excluding WATS access lines and TWX service, but including subscriber line outside plant associated with pay telephones. (OSP Category 1.33) This figure shall be calculated as of December 31st of the year preceding each June filing.

(i) The embedded cost of debt and the debt/equity ratio as of December 31st of the year preceding each June filing.

(j) The projected subscriber access charge revenue requirement calculated pursuant to Part 69 of the Commission's Rules. This figure shall be the revenue requirement projected for the calendar year following the June filing.

62.2 Updating Information Submitted to the Exchange Carrier Association.

62.21 Any telephone company may update the information submitted to the Exchange Carrier Association pursuant to Paragraph 62.1 (a) through (i) one or more times annually on a rolling year basis. Carriers wishing to update the preceding calendar year data filed June 30th may (1) submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of that year; (2) submit data on the last six months of the previous calendar year and the first six months of the existing year no later than December 30th of the existing year; and/or (3) submit data on the last three months of the second preceding calendar year and the first nine months of preceding calendar year no later than March 30th of the existing year.

Part 3—Calculation of Loop Costs for Expense Adjustment

63.1 National and Study Area Average Unseparated Loop Cost Per Working Loop.

63.11 Study Area Unseparated Loop Cost. For the purposes of calculation of the expense adjustment, the study area unseparated loop cost is equal to the sum of the following:

(a) Return component for net unseparated OSP Category 1.33 investment. This amount is calculated by deducting the depreciation reserve and accumulated deferred federal income taxes attributable to OSP Category 1.33 investment reported pursuant to Paragraph 62.11(b) from the gross plant investment in OSP Category 1.33 reported pursuant to Paragraph 62.11(a) to obtain the net unseparated OSP Category 1.33 investment. The net unseparated OSP Category 1.33 investment is multiplied by the study area's cost of capital. The cost of capital is calculated by multiplying the embedded cost of debt times the percent of the total capital that is debt and adding to this amount the product of the authorized interstate rate of return on equity times the percent of total capital that is equity as this information is reported in Paragraph 62.11(i).

(b) Depreciation expense attributable to OSP Category 1.33 investment as reported in Paragraph 62.11(c).

(c) Maintenance expense attributable to OSP Category 1.33 investment as reported in Paragraph 62.11(d).

(d) General, other expenses and taxes attributable to OSP Category 1.33 investment. This amount equals the net unseparated OSP Category 1.33 investment as calculated in Paragraph 63.11(a) multiplied by the unseparated general and other expenses and taxes as reported in Paragraph 62.11(e) divided by the unseparated net investment for total telephone plant for the study area. The unseparated net investment for total telephone plant for the study area equals the unseparated gross telephone plant investment as reported in Paragraph 62.11(f) minus the unseparated depreciation reserve and accumulated deferred federal income taxes attributable to total telephone plant as reported in Paragraph 62.11(g).

63.2 National and Study Area Average Loop Cost Per Loop.

63.21 National Average Unseparated Loop Cost Per Working Loop. This is equal to the sum of the unseparated loop costs for each study area in the country as calculated pursuant to Paragraph 63.11 divided by the sum of the working loops reported in Paragraph 62.11(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the Exchange Carrier Association.

63.211 (a) The national average unseparated loop cost per working loop shall be recalculated by the Exchange Carrier Association to reflect the optional September, December and March update filings.

(b) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made update filings by the most recent filing date.

(c) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional

interstate expense allocation for companies which did not make an update filing by the most recent filing date.

63.22 Study Area Average Unseparated Loop Cost Per Working Loop. This is equal to the unseparated loop cost for the study area as calculated pursuant to Paragraph 63.11 divided by the number of working loops reported in Paragraph 62.11(h) for the study area.

63.221 If a company elects to update the data which it has filed with the exchange Carrier Association as provided in Paragraph 62.21, the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

Part 4—Calculation of Expense Adjustment—Additional Interstate Expense Allocation

64.1 Expense Adjustment.

64.11 The expense adjustment (Additional interstate expense allocation) is equal to the sum of the following:

(a) Fifty percent of the study area average unseparated loop cost per working loop as calculated pursuant to Paragraph 63.22 in excess of 115 percent of the national average for this cost but not greater than 160 percent of the national average for this cost as calculated pursuant to Paragraph 63.21 multiplied by the number of working loops reported in Paragraph 62.11(h) for the study area.

(b) Sixty percent of the study area average unseparated loop cost per working loop as calculated pursuant to Paragraph 63.22 in excess of 160 percent of the national average for this cost, but not greater than 200 percent of the national average for this cost as calculated pursuant to Paragraph 63.21 multiplied by the number of working loops reported in Paragraph 62.11(h) for the study area.

(c) Seventy percent of the study area average unseparated loop cost per working loop as calculated pursuant to Paragraph 63.22 in excess of 200 percent of the national average for this cost, but not greater than 250 percent of the national average for this cost as calculated pursuant to Paragraph 63.21 multiplied by the number of working loops reported in Paragraph 62.11(h) for the study area.

(d) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to Paragraph 63.22 in excess of 250 percent of the national average for this cost as calculated pursuant to Paragraph 63.21 multiplied by the number of working loops reported in Section 62.11(h) for the study area.

Part 5—Transitional Expense Adjustment

65.1 Transition.

65.11 The expense adjustment for 1989 and subsequent years shall be the amount computed in accordance with Part 4.

65.12 No expense adjustment shall be made prior to 1986.

65.13 The expense adjustments for 1986 through 1988 shall be as follows:

(a) One-fourth of the amount computed in accordance with Part 4 in 1986;

(b) One-half of the amount computed in accordance with Part 4 in 1987; and

(c) Three-fourths of the amount computed in accordance with Part 4 in 1988.

Part 6—Calculation of Interstate End User Common Line Revenue Requirement

66.1 National and Study Area Average Interstate End User Revenue Requirement.

66.11 National Average Interstate End User Common Line Revenue Requirement Per Working Loop. This is equal to the sum of the interstate end user common line revenue requirement developed pursuant to Part 69 of the Commission's Rules for each study area in the country as reported in Paragraph 62.11(j) divided by the sum of the number of working loops reported in Paragraph 62.11(h) for each study area.

66.12 Study Area Average Interstate End User Common Line Revenue Requirement Per Working Loop. This is equal to the interstate end user common line revenue requirement developed pursuant to Part 69 of the Commission's Rules as reported in Paragraph 62.11(j) divided by the number of working loops reported in Paragraph 62.11(h) for the study area.

Part 7—Calculation of High Cost Portion of the Interstate End User Common Line Revenue Requirement

67.1 High Cost Portion Calculation.

67.11 If the study area interstate end user revenue requirement per working loop computed in accordance with Paragraph 66.12 does not exceed 200 percent of the nationwide average computed in accordance with Paragraph 66.11, no portion of this revenue requirement shall be designated as a high cost portion.

67.12 If the study area interstate end user revenue requirement per working loop does exceed 200 percent of the national average, a high cost amount shall be computed by multiplying the difference between the study area revenue requirement per loop and an amount that equals 200 percent of the national average by the number of working loops in the study area.

Glossary

Circuit—A fully operative communications path established in the normal circuit layout and currently used for message, WATS access, TWX, or private line services.

Complex—All groups of operator positions, wherever located, associated with the same call distribution and/or stored program control unit.

Concentration Equipment—Central office equipment whose function is to concentrate traffic from subscriber lines onto a lesser number of circuits between the remotely located concentration equipment and the serving central office concentration equipment. This concentration equipment is connected to the serving central office line equipment.

Host Central Office—An electronic analog or digital base switching unit containing the central call processing functions which service the host office and its remote locations.

Message service—Switched service furnished to the general public (as distinguished from private line service). This includes exchange switched services and all switched services provided by interexchange carriers and completed by a local telephone company's access services, e.g., open-end FX and CCSA/ONALs, MTS, WATS, Execunet.

Minutes-of-use-miles—The product of (a) the number of minutes of use and (b) the average route miles of the circuits involved.

Remote Line Location—A remotely located subscriber line access unit which is normally dependent upon the central processor of the host office for call processing functions.

Remote Trunk Arrangement (RTA)—Arrangement that permits the extension of TSPS functions to remote locations.

Study Area—A telephone holding company's operations within a single state.

Traffic Service Position System (TSPS)—A stored program electronic system associated with one or more toll switching systems which provides centralized traffic service position functions for several local offices at one location.

TSPS Complex—All groups of operator positions, wherever located, associated with the same TSPS stored program control unit.

Weighted Standard Work Second—A measurement of traffic operating work which is used to express the relative time required to handle the various kinds of calls or work functions, and which is weighted to reflect appropriate degrees of waiting to serve time.

Statement of Commissioner Marvin R. Weatherly

CC Docket No. 80286

Of all the issues faced by this Joint Board, the most important is the allocation of NTS exchange costs between the federal and state jurisdictions. This allocation decision is the *sine qua non* of achieving the national goal of universal telephone service. In my state, Alaska, universal rural service is still a goal, not a reality. Without substantial support from all telephone users who enjoy the ability to call into rural areas, telephone service in many high cost, low population rural exchanges cannot be sustained.

Most rural exchanges have relatively high toll calling and length of haul patterns. Under existing allocation formulas, all users do pay part of the cost of being able to call into rural areas. The use of the current separations methodology has allowed many rural areas to *begin* to enjoy universal telephone service. Without similar support mechanisms, telephone service cannot exist in many rural communities. The United States abounds in this type of community. Even with current levels of support, Alaska is struggling to *initiate* telephone service in most bush villages.

To rural America it seems foolhardy to change a system of rate support that has put telephones into 97% of all American homes (in Alaska we have a substantial way to go to reach this level). That system has served rural areas well up to now. But there is no doubt that it must be modified. The FCC's introduction of interstate toll competition and recently adopted access charges scheme undercut the premises underlying the current allocation methodologies. Changes are necessary to accommodate fair competition. However, these changes need not, and should not, impose a major cost burden on end users or otherwise be incompatible with the goal of universal service.

I concur in this Joint Board decision because it recognizes the problems of rural areas and takes some steps to remedy those problems in the new allocation methodologies. However, the decision is much less than I had hoped for. It will generally cause significant cost shifts away from the large users and onto the residential and small business users. While detailed cost statistics are not yet available to determine the precise impact on various communities, preliminary indications are that many end users will be subjected to substantial increases in basic telephone rates. I don't think this is either necessary or wise. These increases, together with the direct assignment of non-traffic sensitive costs to the end user imposed by the FCC under the new access charge rules and certain other FCC regulatory changes, e.g., the deregulation of CPE and inside wiring and accelerated depreciation, will cause an upward spiral in the basic monthly charge for most telephone subscribers. If too many subscribers, or potential subscribers, find the fixed monthly telephone charges higher than they can afford, the foundation of universal service will be imperiled.

Despite my reservations about this particular allocation scheme, I concur in it for two primary reasons. First, it recommends as national policy that, above a certain cost level, the federal jursidiction should accept responsibility for *all NTS costs*. This is a critically important point. I believe this result is mandated by Section 1 of the Communications Act of 1934 which establishes as a national goal the availability "to all the people of the United States a rapid, efficient, Nation-wide, and world-wide and radio communication service with adequate facilities at reasonable charges." I am pleased that my colleagues on the Joint Board have agreed.

Having established the principle of federal responsibility beyond a certain level, the remaining issue is where to set the cost level for full federal responsibility. Here the Board's decision leaves much to be desired. The Board recommends that the high cost factor be applied to some NTS costs above 115% of the national average. However, the 100% federal assignment level is not reached until an exchange's NTS costs are 250% of the national average! The practical result is that the plan does cap the interstate allocated NTS assigned directly to end users in any community—a good conceptual result. But full federal cost recovery occurs only after high cost exchange subscribers have paid 100% more than their urban, average cost exchange brethen! Or 56% more if intrastate costs are also considered.

The 115% "trigger" sounds good in a press release. But our decision will force rural exchanges to charge their subscribers much more than 115% of what the local urban folk will pay. Let's take the example of an exchange company with an average $37.50 monthly NTS revenue requirement per subscriber (250% of the national average of $15 per month). Such a company is typical in Alaska and other high cost rural areas. Of that revenue requirement under the Board's recommended jurisdictional allocation and the Commission's access charge rules, $7.50 monthly will be recovered directly from the end user (following the transition period), double the federal NTS charge of $3.75 that a subscriber in an average cost area will pay. And this $7.50 only pays for the interstate access portion of the exchange's NTS costs. In addition, the intrastate jurisdiction will have to recover another $15.90 in NTS charges. If the state recovers its $15.90 revenue requirement through fixed user charges, as does the FCC for the federal share, and through the local exchange rates, the subscriber in this high cost exchange will pay total *fixed* monthly charges of $23.40 before any usage charges at all! And the subscriber cost doesn't stop there. These charges only pay the cost of the dedicated subscriber loop. The subscriber must pay, in addition, for exchange switching, lease or purchase of his own CPE, and toll charges.[49]

Another problem is that the cap provides only a relative "ceiling" on NTS costs. It does nothing to retard rises in the "floor" on NTS charges since the cap is stated as a percentage of the national average NTS costs. As the national average, on the "floor", increases, so will the actual dollar spread paid by the subscriber in the high cost exchanges as compared to the urban subscriber. The FCC appears committed in its access charge decision to shift NTS exchange costs from high volume toll users to individual exchange subscribers. This decision makes it inevitable that the national average charge to exchange subscribers will increase significantly, even apart from inflation.[50] Thus, the subscriber in a

[49] Toll usage in rural areas tends to be substantially higher than in urban areas because of the restricted size of the exchange area and transportation infrastructure. Thus, it is not difficult to imagine an average monthly telephone bill in many rural communities of $40 to $50 or more.

[50] This is illustrated by the FCC's statistics which reported average monthly exchange revenues of $13.24 per telephone in 1980, which included the cost of CPE, inside wiring and local switching. (See Statistics of Communication Common Carriers, 1980, Table 4.) By comparision, the average revenue requirement for exchange NTS costs, exclusive of CPE, inside wiring and switching, to be recovered from the end user is now projected at $14.43 monthly, based on 1980 statistics (See Appendix A to the Joint Board Statement of Principals and Request for Further Comments, released March 23, 1983).

high cost area will find a substantial increase in the "floor" at which the federal support will begin. Sadly, it can be demonstrated through a "cost causative" analysis that the basic exchange subscriber may be subsidizing the toll carriers and this subsidy will be further enhanced with the current direction taken by the FCC.[51]

Since individual subscribers will veiw all fixed monthly charges, whether or not listed as a separate line item on a statement, as the cost of local telephone service, I fear rapid increases in charges will have a particularly adverse effect on subscribership. As valuable as telephone service is in remote, high cost communities, many subscribers, or potential subscribers, will not be able to afford $30 to $40 monthly charges for service, exclusive of toll.

The second reason I concur in this decision is that it represents an effort to accommodate the views of several members of this Board who expressed fears of the by-pass threat to the traditional telephone network. I believe the by-pass threat is overstated (I admire the effectiveness of the hype from certain members of the telephone industry). Large volume users have had the ability to by-pass the network for years, and they will continue to employ by-pass facilities in the future when it proves economic or when the switched voice network does not meet their technological needs. The real solution to the by-pass problem, if and when it develops, is to equitably assign the NTS costs to all users who benefit from the existence of the national network. A small additional traffic sensitive charge to support universal service will not significantly alter the economic incentives to remain on the network which large users will receive in the form of reduced toll charges from the implementation of the FCC's access charge rules.

The difference between a one-half cent per minute universal service fund contribution, which the Board's recommendation contemplates, and a somewhat higher contribution of about one cent per minute that would be needed to support all NTS costs have 110% of the national average would have, in my opinion, a very marginal effect on by-pass economics and the amount of additional by-pass that could be expected. Nonetheless, several Board members were willing to support only the lower USF contribution limits. Therefore, the recommended allocation scheme is about the best that could be achieved under the circumstances.

I have supported, and I continue to support, a mechanism whereby the universal service fund will accept responsibility for all NTS costs have 110% of the national average. While such support will increase the revenue requirement of the universal service fund, that increase would not be so great as to cause an undue burden on the toll users or cause significant by-pass problems.

In sum, I concur in these Joint Board recommendations because the allocation approach is conceptually sound and it represents a significant achievement. Thus, I urge the Commission, or the Congress, to carefully consider raising the level of support provided to high cost exchange as necessary to protect universal telephone service to all areas of the nation.

Marvin R. Weatherly,
Commissioner, Member, Joint Board.

Dissenting Statement of Commissioner Anne P. Jones

In Re: Amendment of Part 67 of the Commission's Rule, CC Docket 80–286

In my Dissenting Statement to the Joint Board's "Statement of Principles and Request for Further Comments," I expressed my concern about the inconsistency between jurisdictional separations and the Commission's policies supporting competition in the intercity transmission market. I believe that this Joint Board should now address the threshold question directly whether the jurisdictional separation of costs continues to make any sense given the increasingly competitive nature of the telecommunications industry. By its decision to maintain the jurisdictional allocation of costs at approximately the existing proportion, the Joint Board majority has apparently indicated that it believes the answer to that question is yes. I strongly disagree.

Continuing to apportion the non-traffic sensitive costs of local exchange carries between the intrastate and interstate jurisdictions not only complicates unnecessarily the tariffing of local exchange access but also perpetuates the illusion that the separations process is a viable mechanism for subsidizing high-cost telephone companies. I simply do not understand how consumers will benefit from the pricing confusion and complexity created by the jurisdictional separation of costs that creates the mythical classifications of "interstate network access" and "intrastate network access." Similarly, I do not understand how consumers are protected from unreasonable local exchange rate increase when the telephone company, not the consumer, is the direct recipient of a subsidy from the Universal Service Fund and is not required to apply the subsidy directly to the allocated costs of local exchange service. What is to prevent a Bell Operating Company from subsidizing its intrastate toll business or, in the case of independent telephone companies, subsidizing other lines of business, rather than keeping basic telephone rates "low" or affordable"?

It is not clear to me that the Joint Board's recommendations can in any event be more than a temporary benefit to either high-cost telephone companies or their regulators. The days are numbered for regulators who believe they can mandate economically irrational behavior in the telephone industry. It is unrealistic to persist in the belief that dynamic telecommunications markets will adjust to a regulator's transition timetable to preserve "equities" among affected market participants. "Equity"-driven policies may be sustainable in a slow growth, static-technology industry. They are simply not viable in a dynamic growth industry such as telecommunications. Consequently, I fear that neither high-cost companies nor their state regulators will find the Joint Board's recommendations a solution to their respective financial and political ills. I am sure consumers will not.

I have discussed my proposal for separation reform elsewhere and need not repeat it here.[52] Suffice it to say that a 100% gross assignment approach to jurisdictional separations and a subsidy mechanism focused on specific telephone subscribers provide a sustainable approach to jurisdictional cost allocation and would fully support the FCC's policies promoting competition in the telecommunications industry. I hope my colleagues on the Commission will agree and will support this approach rather than the recommendations of the Joint Board.

[FR Doc. 83–27065 Filed 10–12–83; 8:45 am]
BILLING CODE 6712–01–M

[51] *The Allocation of Local Exchange Plant Investment To The Common Exchange and Toll Services On The Basis of Equalized Relative Cost Benefits: A Research Paper Supported by The Kansas Corporation Commission;* by Richard Gabel, Willian Melody, Bob Warnek, Bill Mihuc, May 23, 1983.

[52] See "Dissenting Statement of Commissioner Anne P. Jones *In Re:* In the Matter of Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80–286," March 23, 1983.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-77, Notice 1]

Transportation of Hazardous Liquids by Pipeline; Isolated Corrosion Pitting

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the standard governing isolated corrosion pitting on interstate hazardous liquid pipelines by replacing it with a standard similar to the one governing localized corrosion pitting on gas transmission lines. The current standard is too restrictive because it does not permit the use of technological advances in evaluating the strength of corroded pipe. This proposed amendment will reduce costs to industry and consumers without reducing public safety.

DATE: Interested persons are invited to submit written comments on this proposal before November 28, 1983. Late filed comments will be considered so far as practicable.

ADDRESS: Comments should be sent to the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, and identify the docket and notice numbers. All comments and other docket material are available in Room 8426 for inspection and copying between the hours of 8:30 a.m. and 5:00 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392.

SUPPLEMENTARY INFORMATION: By a letter dated May 21, 1982, The American Petroleum Institute (API), a National trade association involved in most areas of the petroleum industry, petitioned MTB to revise the Federal safety standard in § 195.416(g) governing isolated corrosion pitting. The API asked that the standard be revised to reflect the corrosion pitting criteria found in paragraph 451.6.2(a)(7) of the American Society of Mechanical Engineers (ASME) Code B31.4, "Liquid Petroleum Transportation Piping Systems" (1979 Edition).

With regard to steel pipe that is required to be examined for external corrosion, § 195.416(g) provides:

"If isolated corrosion pitting is found, the operator shall repair or replace the pipe unless—

(1) The diameter of the corrosion pits is less than the nominal wall thickness as measured at the surface of the pipe; and

(2) The remaining wall thickness at the bottom of the pits is at least 70 percent of the nominal wall thickness."

This standard was derived from a notice of proposed rulemaking (33 FR 10213; July 17, 1968) which in § 180.416(g) proposed that pipe be replaced if corrosion pitting reduces the original wall thickness by 10 percent or more. The technical basis for the modified version of the rule finally adopted as quoted above was not explained in the final rule document (34 FR 15473; Oct. 4, 1969).

On the basis of research conducted by Battelle Columbus Laboratories ("Summary of Research to Determine the Strength of Corroded Areas in Line Pipe", J. F. Kiefner and A. R. Duffy, July 20, 1971), as reflected in the B31.4 Code, API asserts in its petition that § 195.416(g) is unduly stringent. The current rule is said to cause pipe to be replaced or repaired when these remedial measures are not needed for safety.

The Battelle research developed and tested criteria, incorporating mathematical expressions of length and depth of corroded areas, to predict the pressure strength of corroded pipe. For pit depths equal to 80 percent or more of nominal wall thickness, the criteria require repair or replacement of pipe. For pit depths less than 80 percent of nominal wall thickness, the criteria permit continued operation of pipe at its current maximum pressure if the measured aggregate length of the corroded area is equal to or less than a calulated value. The pipe may be operated at a calculated reduced pressure if the length is longer than the calculated value.

The underlying premise of these criteria is that the minimum stress level at which pipe will fail in corrosion pits is 100 percent of the pipe's specified minimum yield strength (SMYS). Since the maximum operating pressure permitted under Part 195 produces a maximum stress level of 72 percent of SMYS, the criteria provide a 1.4 (100/72) factor of safety. This factor is greater than the minimum 1.25 factor of safety provided under § 195.406(a)(3) by hydrostatic pressure testing. The 1.25 factor, which results from limiting maximum operating pressure to 80 percent of test pressure, is generally accepted as a sufficient measure of pipeline integrity.

MTB concurs with API's criticism of the current standard for accepting or rejecting isolated corrosion pitting because it has no apparent scientific foundation and does not emphasize pipe strength. The remaining pressure strength of pipe material in a corroded area is the most important consideration in determining whether the pipe can safely continue in use. Although evaluating that strength is a complex problem, the Battelle criteria have gained recognition as an accpetable method of evaluation. Not only are the criteria including in the B31.4 Code, but they are also in the ASME B31.8 Code for gas pipelines and the ASME *Guide for Gas Transmission and Distribution Piping Systems*. In view of the safety provided by the Battelle criteria, their widespread acceptance by the industry, and the potential for cost savings, the MTB is proposing to grant API's petition and amend § 195.416(g) to allow use of the Battelle criteria.

Rather than including the criteria directly in 195.416(g), MTB believes that adopting a performance standard is a better rulemaking option, because it would permit the use of future technological developments. Although the B31.4 Code provisions that API recommended are not performance standards, the MTB standard in 49 CFR 192.485(b) for localized corrosion pitting on gas transmission lines is written in performance terms. This Part 192 standard for pipelines comparable to interstate hazardous liquid pipelines and operated in similar environments has provided an accpetable level of safety without enforcement difficulties since its adoption in 1978 (36 FR 12302). MTB proposes therefore, that this standard, which is set forth below in a slightly modified form to fit the Part 195 regulatory context, be adopted for isolated pitting on hazardous liquid pipelines subject to Part 195 instead of the current § 195.416(g). MTB believes there is no significant difference between the terms "isolated" and "localized" when used to describe corrosion pitting, and use of the latter term will provide consistency with Part 192 and the B31.4 Code provisions.

A noticeable difference between the proposed standard and the current one is that § 195.416(g) now does not expressly permit the reduction of operating pressure as an alternative remedy to repair or replacement of corroded areas. However, by Interpretation 82-8, issued August 16, 1982, MTB declared that §§ 195.416 (f) and (g) may be read together for purposes of understanding the standard for isolated corrosion pitting. Under that interpretation, pressure reduction in accordance with the general corrosion rule of § 195.416(f) is an allowable remedy for isolated corrosion, pitting. Introducing the new language from

§ 192.485(b) that provides for pressure reduction does not, therefore, represent a change in the way § 195.416(g) is currently being enforced.

Under the proposed revised wording of § 195.416(g) as well as the current § 192.485(b), the key consideration in determining if a remedy is required is whether pitting exists to a degree where leakage might result. The Battelle criteria and the B31.4 Code provide a simple, objective means of making this determination. Operators may, of course, use any other demonstrably safe method, such as pressure testing in accordance with Part 195 requirements at 1.25 times maximum operating pressure, to verify that leakage from corrosion pits would not occur under normal operating conditions. Such conditions would include compliance with other corrosion control requirements of Part 195, which are intended to preclude further corrosion damage.

Classification

The Regulatory Flexibility Act (94 Stat 1164, 5 U.S.C. 601) requires a review of each proposed safety regulation issued after January 1, 1981, for its effect on small businesses, organizations, and governmental bodies. I certify that the regulation proposed by this notice will not have a significant economic impact on a substantial number of small entities because few, if any, interstate hazardous liquid pipelines are owned by small entities.

Since this proposed rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and governmental agencies, and no adverse effects are anticipated, the action is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures. Further, MTB has determined that this proposal does not require a full draft Regulatory Evaluation under those procedures. While the proposed rule would provide definite cost savings for operators in many cases, the difference between the proposed and current requirements and the frequency at which savings would occur should result only in a minor cost savings impact on the industry as a whole.

List of Subjects in 49 CFR Part 195

Pipeline safety, External corrosion, General corrosion, Isolated corrosion pitting.

PART 195—[AMENDED]

In view of the above, the MTB proposes to revise § 195.416(g) to read as follows:

§ 195.416 External corrosion control.

* * * * *

(g) If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

(49 U.S.C. 2002; 49 CFR 1.53 and Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington on October 6, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation Materials Transportation Bureau.

[FR Doc. 83-27793 Filed 10-12-83; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 17

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status and Critical Habitats for Seven Plant and One Insect Species in Ash Meadows, Nevada and California

AGENCY: Fish and Wildlife, Service, Interior.

ACTION: Proposed rule and finding on a petition.

SUMMARY: The Service proposes to determine seven plant and one insect species to be Endangered species and to designate their Critical Habitats. This action is being taken because these species are restricted to the Ash Meadows region and ground water basin in Nye County, Nevada, and Inyo County, California, where they are facing intensifying threats. Imminent land development for housing subdivisions, clearing of land for road construction and agricultural purposes, pumping of ground water, and diversion of surface flows threaten the integrity of the species' habitat and therefore their survival. The proposed rule constitutes the Service's findings on a petition to list the plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from the public and the States of California and Nevada must be received by December 12, 1983. Public hearing requests must be received by November 28, 1983.

ADDRESSES: Interested persons or organizations can obtain information from and submit written comments to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street Portland, Oregon 97232 (phone 503/231-6131), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (phone 703/235/1975).

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River in California and Nevada. This wetland is maintained by flow from several dozen springs and seeps which are fed by an extensive groundwater system which extends more than 100 miles northeast of Ash Meadows. Hundreds of plant and animal species, many of them endemic, are associated with this wetland and depend upon it for survival. The eight species that are the subjects of the proposal occur only in Ash Meadows These eight species are briefly described below.

1. The spring-loving centaury (*Centaurium, namophilum* Reveal, Broome, & Beatley var. *namophilum* Broome) was first recognized as a variety by Broome (1981). *Centaurium namophilum* was described by Reveal, Broome, and Beatley in 1973, although it had been collected as early as 1891 by Coville and Funston (Reveal, Broome, and Beatley, 1973). The spring-loving centaury is an erect annual reaching 4.5 dm in height and has pink flowers. It is found on "moist to wet clay soils along the banks of streams or in seepage areas" (Mozingo and Williams, 1980) and is often found with the Ash Meadows gumplant.

2. The Ash Meadows gumplant (*Grindelia fraxino-pratensis*, Reveal and Beatley) was described by Reveal and Beatley in 1971, although it had been collected as early as 1935 by Beatley (Reveal and Beatley, 1971). It is an erect biennial or perennial reaching 7 to 10 dm in height and has yellow inflorescences that have heads measuring 8 to 10 mm in diameter (Mozingo and Williams, 1980).

Its primary habitat is in saltgrass meadows along streams and pools but it occasionally occurs in alkali clay soils in drier areas (Cochrane, 1981), and its range includes portions of Nevada and California.

3. The Ash Meadows ivesia (*Ivesia eremica* (Coville) Rydberg) was first described as *Potentilla eremica* in 1892. It is a perennial with a tuft of leaves emerging from a woody root crown. The inflorescences bear few flowers and these have petals about 7 mm long. The Ash Meadows ivesia occurs only in Nevada in saline seep areas of light-colored clay uplands (Mozingo and Williams, 1981).

4. The Ash Meadows blazing star (*Mentzelia leucophylla* Brandegee) was described by Brandegee (1899) based on material collected by Purpus in 1898 (Reval, 1978a). It is a biennial or short-lived perennial with one to several white stems that reach a height of 5 dm, and its light yellow flowers occur in broad inflorescences (Mozingo and Williams, 1981). It occurs only in Nevada on sandy or saline clay soils along canyon washes and near springs and is often found with the Ash Meadows milk-vetch and the Ash Meadows sunray (Mozingo and Williams, 1981).

5. The Ash Meadows milk-vetch (*Astragalus phoenix* Barneby) was described in 1970, although it was collected as early as 1898 by Carl Anton Purpus (Barneby, 1970). It is "a low matted perennial forming mounds 40 to 50 cm across" and its "pinkish to purple flowers are borne on short, erect stems in the mat and commonly number only one or two per inflorescence" (Mozingo and Williams, 1981). The flowers are about 25 mm (1 inch) long. The Ash Meadows milk-vetch is found only in Nevada on "dry, hard, white, barren saline, clay flats, knolls, and slopes" (Mozingo and Williams, 1981).

6. The Ash Meadows sunray (*Enceliopsis nudicaulis* (A. Gray) A. Nelson var. *corrugata* Cronquist) was described in 1972 from material collected by Cronquist in 1966 (Cronquist, 1972), although Mozingo and Williams (1981) reported that earlier collections were made by others. This perennial plant occurs in 1 to 4 dm high clumps and has floral heads borne singly on leafless flower stalks. The ray flowers have yellow corollas and the disks are 2 to 3.5 cm (.8 to 1.4 inches) across. It occurs only in Nevada in dry washes on whitish saline soil associated with outcrops of pale, hard limestone.

7. The Amargosa niterwort (*Nitrophila mohavensis* Munz and Roos) was first collected by J. C. and A. R. Roos and then described by Munz and J. C. Roos in 1955. The plants are long-lived and low (up to 8 cm high) with small bright green leaves and small, inconspicuous flowers (Reveal, 1978b). It is found only in California on salt-encrusted alkaline flats at the south end of the Carson Slough near the Nevada border (Beatley, 1977).

8. The Ash Meadows naucorid (*Ambrysus amargosus* La Rivers) is an insect (Order Hemiptera, family Naucoridae) that was described in 1953 based on material collected by Ira La Rivers and T. Frantz in 1951 (La Rivers, 1953). It has been found only in Point of Rocks Springs and their outflow streams. It is a small aquatic insect reaching about 6 mm in length that is apparently unable to fly.

Many other plant and animal species are endemic to Ash Meadows. The Service proposed the Ash Meadows turban snail (*Fluminicola erythropoma*) as Threatened on April 28, 1976 (41 FR 17742); that proposal was withdrawn on December 10, 1979 (44 FR 70796) for administrative reasons as a result of the 1978 Amendments to the Endangered Species Act. Current evidence indicates that this species, as proposed, actually comprised more than one species. This area has an extraordinarily diverse freshwater mollush fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails which are found within a 5-mile radius within Ash Meadows and give Ash Meadows the highest concentration of endemic species in the United States. Most of these mollush species have not been scientifically described and named.

Five endemic fishes have been recorded from Ash Meadows. The Devil's Hole pupfish (*Cyprinodon diabolis*) was listed as Endangered on March 11, 1967 (32 FR 4001), and the Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*) was listed as Endangered on October 13, 1970 (35 FR 16047). The Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*) and the Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*) were listed as Endangered by an emergency rule published on May 10, 1982 (47 FR 19995). Emergency protection for these two species was extended by a second emergency rule published on January 5, 1983 (48 FR 608) that also included Critical Habitats. Published simultaneously with this second emergency rule was a formal proposal for Endangered status and Critical Habitats under normal listing procedures for the Ash Meadows speckled dace and the Ash Meadows Amargosa pupfish (48 FR 617). A fifth endemic Ash Meadows fish species, the Ash Meadows killifish (*Empetrichthys merriami*), is now extinct.

One additional plant species not included in the present proposal is the Tecopa bird's beak (*Cordylanthus tecopensis*). This species has a wider but still restricted range that includes Ash Meadows.

Early homesteaders attempted to farm Ash Meadows using the free-flowing water from the springs for irregation. These efforts failed because the salty, clay soils were not suitable for crops. Agricultural practices in the late 1960's and early 1970's resulted in large tracts of land being plowed and the installation of groundwater pumps and diversion ditches to support a cattle-feed operation. These practices resulted in the destruction of many populations of plants and animals and their wetland habitats by alteration of the land surface and lowering of the water table. In 1976, the Supreme Court limited the amount of groundwater pumping in Ash Meadows to ensure sufficient water levels in the only known habitat of the Endangered Devil's Hole pupfish. The agricultural interests in Ash Meadows sold approximately 23 square miles of land to a real estate developer, Preferred Equities Corporation (PEC), in 1977.

While the Bureau of Land Management (BLM) is the principal landowner in Ash Meadows, PEC owns most of the surface water rights, which are currently designated for municipal use. Ground water pumping would be required to develop and support municipal and agricultural activities.

The initial phase of construction, when completed, would result in the destruction of Crystal Pool, Point of Rocks Springs, and Jack Rabbit Spring and possibly lower the level of other springs by ground water pumping. PEC's activities have already substantially altered surface flows and spring hole morphometry at these sites. PEC has recently constructed a multi-lane road which connects Ash Meadows at Point of Rocks Springs with Pahrump Valley, a continuing section of road (2 miles long and 80 feet wide) north of Jack Rabbit Springs, and an additional road (1.5 miles long and 30 feet wide) east of Crystal Pool. In addition, approximately 1,000 acres of cotton have been planted west of Point of Rocks Springs.

The terrestrial habitats of the Ash Meadows ecosystem are as fragile as the aquatic habitats. The endemic plant species are dependent upon the unique hydrological characteristics of the basin and nearly all require undisturbed soils for sustenance and propagation.

Previous governmental actions affecting these species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. These plant taxa included the Amargosa niterwort, spring-loving centaury (under the scientific name *Centaurium namophilum*), Ash Meadows gumplant, Ash Meadows blazing star, Ash Meadows ivesia, Ash Meadows milk-vetch, and the Ash Meadows sunray.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. That proposed rule included proposals of Endangered status for the spring-loving centaury (under the scientific name *Centaurium namophilum*), Ash Meadows ivesia, Ash Meadows blazing star, Ash Meadows milk-vetch, and the Amargosa niterwort. General comments on this proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 placed time limits for final action on proposed listings. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976, proposal (44 FR 79796) because the time period for final action on the proposal had expired.

On December 15, 1980, the Service published a notice of review of plant taxa (45 FR 82480). That notice identified the 7 plant taxa that are subjects of the present proposal as taxa for which the Service had sufficient biological information to support their being listed as Endangered or Threatened species.

On February 24, 1983, while the present proposed rule was being prepared, the Service received a petition from the Northern Nevada Native Plant Society. This petition requested that the Amargosa niterwort, Ash Meadows milk-vetch, Ash Meadows blazing star, spring-loving centaury, and the Ash Meadows sunray be listed as Endangered and the Ash Meadows gumplant be listed as Threatened. Publication of the present proposed rule satisfies the requirement of Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, that a finding on a petition to revise the lists of Endangered and Threatened species be published within 12 months of the receipt of the petition. Endangered status, rather than Threatened, is being proposed for the Ash Meadows gumplant because the Service believes that the water demands of PEC's proposed development would result in the extinction of all native plant species, including the Ash Meadows gumplant, that are restricted to Ash Meadows.

Summary of Factors Affecting the Species

The Service's listing regulations (codified at 50 CFR Part 424; under revision to accomodate 1982 amendments) provide for a review of the five factors below when listing (or reclassifying or delisting) a species:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; and

(E) Other natural or manmade factors affecting its continued existence.

These factors, and their application to the subject species, are as follows:

(A) *The present or threatened destruction, modification, or curtailment of its habitat or range.* The subjects of this proposed rule occur only in Ash Meadows and depend on the integrity of this fragile ecosystem and flows from the Ash Meadows basin aquifer for their survival. A significant portion of plant habitat in Ash Meadows was eliminated in the 1960's when the Carson Slough was drained to facilitate peat mining. Following the cessation of peat mining, plowing for large-scale farming by Spring Meadows, Inc. removed most of the native plants in the northern portion of Ash Meadows and thereby destroyed most of the habitat of the spring-loving centaury, Ash Meadows gumplant, Ash Meadows ivesia, Ash Meadows blazing star, Ash Meadows milk-vetch, and the Ash Meadows sunray. Although Amargosa niterwort habitat was not plowed, free-flowing water to its habitat was halted by upstream plowing and reduction of spring flows resulting from ground water pumping.

The imminent threat to the existence of these species is the proposed development of Ash Meadows by PEC into a residential, recreational, industrial, and agricultural community. Construction activities would clear essential habitat, directly extirpating populations of these species, and adversely affect remaining populations by altering surface drainage patterns. Human habitation would require great quantities of potable water. Utilization of surface outflows from springs and pumping of the aquifer would destroy down-gradient wetlands by reducing or eliminating surface flows, lowering the water table, and interfering with ground water recharge. All of these species are directly dependent upon these sources of water. The Ash Meadows naucorid is an aquatic insect and would become extinct if its remaining spring habitat were pumped dry. The spring-loving centaury, Ash Meadows gumplant, and Ash Meadows ivesia require saturated soils near springs and their outflows and in seeps. The other four plant species occur in somewhat drier habitats, but still owe their existence to the availability of water near or at the soil surface.

Ground water pumping may seriously deplete water levels (directly and indirectly) upon which these species depend. In the past, pumping of ground water from nearby wells for agriculture lowered the water level in Devil's Hole in Ash Meadows and caused a severe decline in the population of the Endangered Devil's Hole pupfish; continued pumping could have caused the extinction of the species. In 1976, the U.S. Supreme Court ruled (*United States vs. Cappaert et al.*) that a minimum water level must be maintained to protect the Devil's Hole pupfish. Devil's Hole is the most sensitive spring in Ash Meadows, but all the springs are interconnected. The impact of ground water pumping from wells south of Devil's Hole appears to be greater than from those located in the north. Because agricultural and municipal activities require large volumes of water, and pumping of ground water from the northern areas may be necessary to supplement flows from the south, it is expected that the proposed development by PEC would create a demand for water throughout Ash Meadows.

Recent construction activities in Ash Meadows have continued the destruction of native plant and animal habitat that began with early agricultural activities. A significant area of land has already been altered by road

construction in the vicinity of Crystal Pool and Point of Rocks and Jack Rabbit Springs. If development by PEC is completed, clearing of land will eliminate the following percentages of the Critical Habitats proposed in this rule: spring-loving centaury, 37 percent; Ash Meadow gumplant, 26 percent; Ash Meadows ivesia, 45 percent; Ash Meadow blazing star, 37 percent; Ash Meadows milk-vetch, 30 percent; Ash Meadows sunray, 39 percent; Ash Meadows naucorid, 100 percent. The remaining habitats would continue to face the other threats, including reduction in ground water levels and spring flow, described in this proposed rule.

PEC's long-term development plans call for direct alteration of many of these springs with construction to progress in 3 phases in the following areas: Phase I—Crystal Pool; Phase II—Point of Rocks Springs; Phase III—Fairbanks spring complex. The Nye County Commission has already approved phases I and II, and work has begun. Further, PEC, as principal owner of water rights, has made application to the State of Nevada to divert water from many of the other Ash Meadows springs, which will destroy more riparian habitat.

Initial construction activities in late spring and summer of 1981 severely altered the watercourse of two springs (Point of Rocks and Bradford) and related spring hole morphometry. The outflow channels of Crystal Pool and King Pool (Point of Rocks Springs) have been modified to increase flows, resulting in the lowering of pool levels 1–1.5 feet and consequently decreasing riparian habitat. These activities have eliminated some habitat of the spring-loving centaury.

The preferred habitat of the Ash Meadows naucorid had been the gravel-bottom outflow of Point of Rocks Springs. That habitat has been eliminated by channelization so that this insect now only occurs in reduced numbers in the spring pools.

Many plant populations in Ash Meadows have been reduced by off-road vehicle traffic. Most of the Rogers Spring population of the Ash Meadows milk-vetch was destroyed by an off-road vehicle race in 1968.

The spring loving centaury once occurred at sites outside of Ash Meadows near Beatty, Nye County, Nevada, and in Inyo County, California, near Tecopa and at Furnace Creek in Death Valley. It has not been found recently at these sites and is now considered extinct outside of Ash Meadows.

(B) *Overutilization for commercial, recreational, scientific, or educational purposes.* The extremely small population levels to which the Ash Meadows naucorid has been reduced make that species vulnerable to collection for scientific purposes.

(C) *Disease or predation* (including grazing). The spring-loving centaury, Ash Meadows gumplant, and the Ash Meadows ivesia are grazed by cattle and feral horses. The Ash Meadows gumplant has been found to be 90% depleted within a fenced area where cattle and horses graze near Ash Meadows Rancho.

(D) *The inadequacy of existing regulatory mechanisms.* The State Forester Fire Warden of the Nevada Division of Forestry maintains a list of critically endangered plants. That list includes the spring-loving centaury, Ash Meadows gumplant, Ash Meadows milk-vetch, and the Ash Meadows blazing star. Other than providing recognition of these species' status, inclusion on this list provides no legal protection of the individual plants or their habitats. The Amargosa niterwort is listed as endangered on the State of California list of rare and endangered species. That designation does not protect this species from the major threat to its existence, interruption of the water supply for its habitat.

(E) *Other natural or man-made factors affecting its continued existence.* Trampling by cattle and/or feral horses is a threat to the native plants throughout Ash Meadows.

Critical Habitat

50 CFR Part 424 defines "Critical Habitat" to include areas within the geographical area occupied by the species at the time the species is listed which are essential to the conservation of the species and which may require special management considerations or protection and specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Proposed Critical Habitat for the spring-loving centaury is as follows:

Nevada, Nye County, Ash Meadows: SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼S. 21; W½NW¼S. 23; NW¼NE¼, NE¼NW¼S. 28; SE¼SE¼S. 34; SW¼SW¼, E½SW¼S. 35; T 17 S, R 50 E. SW¼S. 1; NE¼NW¼, W½NW¼S. 2; E½NE¼S. 3; NE¼S. 7; SE¼SE¼S. 23; SE¼SW¼S. 24; T 18 S, R 50 E. NW¼SE¼S. 7; S½NW¼, SW¼S. 18; NW¼, NE¼SW¼S. 19; E½SW¼S. 20; N¼NW¼S. 29; NE¼NW¼S. 30; T 18 S, R 51 E.

These areas includes moist to wet clay soils along banks of streams or in seepage areas.

Proposed Critical Habitat for the Ash Meadows gumplant is as follows:

California, Inyo County, Ash Meadows: NE¼S. 30 southwest of the Nevada-California boundary; E½NW¼S. 30 southeast of Nevada-California boundary; SW¼NW¼, N½SW¼, NW¼SE¼S. 30; T 26 N, R 6 E.

Nevada, Nye County, Ash Meadows: SE¼NW¼S. 26; W½SW¼NE¼, W½NW¼ SE¼S. 3; W½NW¼, SW¼SW¼, E½SW¼, W½SE¼S. 35; T 17 S, R 50 E. N½SW¼S. 1; N½NW¼, SW¼SW¼S. 2; NE¼NE¼, NW¼NW¼S. 3; SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼S. 4; E½NE¼, NE¼SE¼S. 5; N½NE¼S. 7; NE¼SE¼S. 10. W½NW¼, NW¼SW¼S. 11; SW¼NE¼, E½SE¼S. 14; SW¼NW¼, SW½SE¼S. 20; W½SW¼ and SE¼SW¼S. 20 northeast of the Nevada-California boundary; E½NE¼, E½SE¼S. 23; W½SE¼S. 24; NW¼NE¼S. 29 northeast of the Nevada-California boundary; T 18 S, R 50 E. SW¼NW¼, NW¼SW¼S. 18, T 18 S, R 51 E.

These areas include saltgrass meadows along streams and pools or drier areas with alkali clay soils.

Proposed Critical Habitat for the Ash Meadows ivesia is as follows:

Nevada, Nye County, Ash Meadows: SW¼NE¼, W½SE¼S. 21; S½SW¼, SW¼SE¼S. 35; T 17 S, R 50 E. SW¼S. 1; N½NW¼, SW¼SW¼S. 2; NE¼NE¼S. 3; NW¼NE¼S. 12; N½NE¼, SE¼NE¼S. 23; N½NW¼, SW¼NW¼, NW¼SW¼S. 24; T 18 S, R 50 E.

These areas include saline seep areas of light-colored clay uplands.

Proposed Critical Habitat for the Ash Meadows milk-vetch is as follows:

Nevada, Nye County, Ash Meadows. W½NW¼, SW¼SW¼S. 14; SW¼NE¼, W½SE¼S. 21; NW¼SE¼S. 22; NW¼S. 26; T 17 S, R 50 E. SW¼, W½SE¼S. 1; NW¼NE¼, N½NW¼S. 12; SW¼SW¼S. 13; W½ NW¼S. 24; T 18 S, R 50 E. SE¼SW¼, SW¼ SE¼S. 7; N½NW¼, E½SW¼S. 18; NE¼ NW¼S. 19; T 18 S, R 51 E.

These areas include dry, hard, white, barren saline, clay flats, knolls, and slopes.

Proposed Critical Habitat for the Ash Meadows blazing star is as follows:

Nevada, Nye County, Ash Meadows: SW¼SW¼S. 15; S½NE¼, N½SE¼, SW¼SE¼S. 21; NW¼NW¼, S½NW¼, NE¼SE¼S. 22; NW¼SW¼S. 23; NW¼NE¼S. 28; SE¼SW¼, SE¼S. 35; SW¼SW¼S. 36; T 17 S, R 50 E. NW¼NW¼, SW¼SW¼, E½SW¼S. 1; NE¼NE¼, S½SE¼S. 2; N½NE¼S. 11; NW¼S. 12; T 18 S, R 50 E.

These areas include sandy or saline clay soils along canyon washes and near springs and seeps.

Proposed Critical Habitat for the Ash Meadows sunray is as follows:

Nevada, Nye County, Ash Meadows: SW¼SE¼S. 15; SW¼NE¼, W½SE¼S. 21; NW¼NE¼S. 22; E½SE¼S. 34; SW¼NE¼, S½NW¼, SW¼, W½SE¼S. 35; T 17 S, R 50 E. SE¼S. 20; T 17 S, R 51 E. NW¼, SW¼, W½SE¼S. 1; E½NE¼, SW¼NW¼, NW¼ SW¼, E½SE¼S. 2; NE¼NW¼S. 12; E½ SW¼, W½SE¼S. 13; T 18 S, R 50 E. SW¼ SE¼S. 7; NW¼NE¼, SE¼SW¼S. 18; T 18 S, R 51 E.

These areas include dry washes or whitish, saline soil associated with outcrops of pale whitish limestone.

Proposed Critical Habitat for the Amargosa niterwort is as follows:

California, Inyo County, Ash Meadows: NW¼SW¼S. 5; NE¼, E½NW¼, E½SW¼, SE¼S. 6; NE¼, E½NE¼S. 7; NW¼S. 8; T 25 N, R 6 E.

Thesea areas include salt-encrusted alkaline flats.

Proposed Critical Habitat for the Ash Meadows naucorid is Point of Rocks Springs, Ash Meadows, Nye County, Nevada.

Each of the above proposed Critical Habitats includes the entire known present range of the subject species. The activities that may adversely modify these Critical Habitats are described in the "Factors Affecting the Species" section of this proposed rule.

Effect of This Proposal if Published as a Final Rule

Endangered Species regulations already published in Title 50, § 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered animals. 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 commercial activity, or sell or offer for sale the Ash Meadows naucorid in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

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

The Act and implementing regulations published in the June 24, 1977, **Federal Register** set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations pertaining to Endangered plants are found at 50 CFR 17.61 and are summarized below.

With respect to the seven plant species included in this proposed rule, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale any of these plant species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plant species.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession Endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through Sections 10(a) and 4(d) of the Act, following the general approach of 50 CFR 17.72 until revised regulations are promulgated.

This rule, if made final, would allow development by Preferred Equities Corporation (PEC) to be met by enforcement action undertaken through Section 9 of the Endangered Species Act or civil injunction should such development jeopardize the existence of the Ash Meadows naucorid. Alteration of the surface or ground water levels in habitats supporting this species could likewise be countered by enforcement efforts.

If this proposal is published as a final rule, Section 7 of the Act would require Federal agencies to ensure that activities they authorize, find, or carry out are not likely to jeopardize the continued existence of these species, and to ensure that their actions do not result in the destruction or adverse modification of the Critical Habitats of the species. Section 7 would also require Federal agencies to consult with the Secretary to ensure that these Section 7 requirements are fulfilled. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Subsection 4(b)(8) of the Act requires that, to the maximum extent practicable, any proposal to designate Critical Habitat be accompanied by a brief description and evaluation of those activities which in the opinion of the Secretary may adversely modify such habitat if undertaken or may be impacted by such designation. Activities that may adversely affect these Critical Habitats include the activities carried out and planned by Preferred Equities Corporation (PEC) that would modify the springs and their outflows, disturb the land areas occupied by the plants, alter drainage patterns on which these plants depend, or draw down the water table to the extent that spring flows are reduced.

Activities that may be affected by the listing of these species as Endangered and designation of their Critical Habitats include PEC's activities in Ash Meadows. Listing these species as Endangered would not specifically preclude in their entirety housing, commercial, intensive agricultural, or industrial development in Ash Meadows. Full protection of these species would preclude a portion of the proposed PEC development. The exact extent of possible water conflict is currently unknown.

The total land area covered by the proposed Critical Habitats for these eight species is less than eleven square miles. Based on the best available scientific and commercial data, the Service believe that a smaller area for any of these species could result in extinction.

The Bureau of Land Management (BLM) has jurisdiction over nearly half of the areas that are included in these Critical Habitats. Present BLM activities are consistent with the conservation of these species and therefore will not be affected by this proposed action.

Subsection 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. Therefore, an impact analysis will be prepared prior to the time of a final rule and will be used as the basis of a decision on whether or not to exclude any area from Critical Habitat for any of the species included in the rule. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action.

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 or 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, commercial, or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of these species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of these species;

(4) Current or planned activities which may adversely modify the subject areas which are being considered for Critical Habitats; and

(5) The foreseeable economic and other impacts of the Critical Habitat designations.

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 and addressed to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of preparation of a final rule as to whether this is a major Federal action that would significantly affect the quality of the human environment within the neaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Author

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

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List of Subjects in 50 CFR Part 17

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

Proposed Regulations 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), subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by adding the following entry alphabetically to the table under the heading "Insects" as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * * * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
			INSECTS				
Naucorid, Ash Meadows	*Ambrysus amargosus*	U.S.A. (NV)	N/A	E	N/A	17.95(i)	N/A

3. It is further proposed to amend § 17.12(h), subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by adding the following entries alphabetically to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
Enceliopsis nudicaulis	Ash Meadows sunray	U.S.A. (NV)	E	N/A	17.96(a)	N/A
Grindelia fraxino-pratensis	Ash Meadows gumplant	U.S.A. (CA,NV)	E	N/A	17.96(a)	N/A
Chenopodiaceae—Goosefoot family						
Nitrophila mohavensis	Amargosa niterwort	U.S.A. (NV)	E	N/A	17.96(a)	N/A
Fabaceae—Pea family						
Astragalus phoenix	Ash Meadows milk-vetch	U.S.A. (NV)	E	N/A	17.96(a)	N/A
Gentianaceae—Gentian family						
Centaurium namophilum var. *namophilum*	Spring-loving centaury	U.S.A. (CA,NV)	E	N/A	17.96(a)	N/A
Loasaceae—Loasa family						
Mentzelia leucophylla	Ash Meadows blazing star	U.S.A. (NV)	E	N/A	17.96(a)	N/A
Rosaceae—Rose family						
Ivesia eremica	Ash Meadows ivesia	U.S.A. (NV)	E	N/A	17.96(a)	N/A

§ 17.95 [Amended]

4. It is further proposed to amend § 17.95(i), Insects, by adding Critical Habitat of the Ash Meadows naucorid after that of the Palos Verdes blue butterfly as follows:

* * * * *

Ash Meadows Naucorid (Ambrysus amargosus)

Nevada. Nye County. Point of Rocks Springs.

Known primary constituent elements include warm-water spring pools.

* * * * *

§ 17.96 [Amended]

5. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the Ash Meadows sunray, as follows: (The position of this and the following plant Critical Habitat entries under § 17.96(a) will be determined at the time of publication of a fine rule):

* * * * *

Family Asteraceae: Ash Meadows sunray

(Enceliopsis Nudicaulis var. *corrugata).*

Nevada, Nye County, Ash Meadows. SW¼SE¼S. 15; SW¼NE¼, W½SE¼S. 21; NW¼NE¼S. 22; E½SE¼S. 34; SW¼NE, S½NW¼, SW¼, W½SE¼S. 35; T 17 S, R 50 E. SE¼S. 20; T 17 S, R 51 E. NW¼, SW¼, W½SE¼S. 1; E½NE¼, SW¼NW¼, NW¼SW¼, E½SE¼S. 2; NE¼NW¼S. 12; E½SW¼, W½SE¼S. 13; T 18 S, R 50 E. SW¼SE¼S. 7; NW¼NE¼, SE¼SW¼S. 18; T 18 S, R 51 E.

Known primary constituent elements include dry washes or whitish, saline soil associated with outcrops of pale whitish limestone.

* * * * *

6. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the Ash Meadows gumplant as follows:

* * * * *

Family Asteraceae: Ash Meadows gumplant

(Grindelia fraxino-pratensis)

California, Inyo County, Ash Meadows: NE¼S. 30 southwest of the Nevada-California boundary; E½NW¼S. 30 southeast of Nevada-California boundary; E½NW¼S. 30 southeast of Nevada-California boundary; SW¼NW¼, N½SW¼, NW¼SE¼S. 30; T 26 N, R 6 E.

Nevada, Nye County, Ash Meadows: SE¼NW¼S. 26; W½SW¼NE¼, W½NW¼ SE¼S. 33; W½NW¼, SW¼SW¼, E½SE¼, W½SE¼S. 35; T 17 S, R 50 E. N½SW¼S. 1; N½NW¼, SW¼SW¼S. 2; NE¼NE¼, NW¼NW¼S. 3; SW¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼S. 4; E½NE¼, NE¼SE¼S. 5; N½NE¼S. 7; NE¼SE¼S. 10. W½NW¼, NW¼SW¼S. 11; SW¼NE¼, E½SE½S. 14; SW¼NW¼, SW¼SE¼S. 20; W½SW¼ and SE¼SW¼ S. 20 northeast of the Nevada-California boundary; E½NE¼, E½SE¼S. 23; W½SE¼S. 24; NW¼NE¼S. 29 northeast of the Nevada-California boundary; T 18 S, R 50 E. SW¼NW¼, NW¼SW¼S. 18, T 18 S, R 51 E.

Known primary constitent elements include slatgrass meadows along streams and pools or drier areas with alkali clay soils.

* * * * *

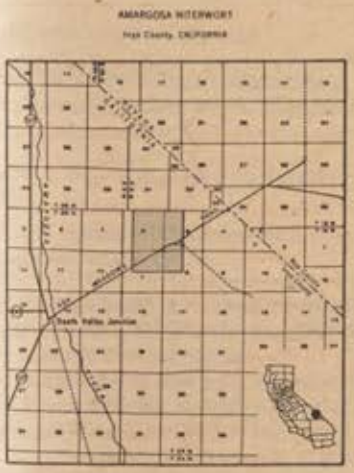
7. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the Amargosa niterwort as follows:

* * * * *

Family Chenopodiaceae: Amargosa niterwort

(Nitrophilia mohavensis)

California; Inyo County, Ash Meadows: NW¼SW¼S. 5; NE¼, E½NW¼, E½SW¼, SE¼S. 6: NE¼, E½NE¼S. 7; NW¼S. 8; T 25 N, R 6 E.



Known primary constituent elements include salt-encrusted alkaline flats.

* * * * *

8. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the Ash Meadows milk-vetch as follows:

* * * * *

Family Fabaceae: Ash Meadows milk-vetch

(Astragalus phoenix)

Nevada, Nye County, Ash Meadows: W½NW¼, SW¼SW¼S. 14; SW¼NE¼, W½SE¼S. 21; NW¼SE¼S. 22; NW¼S. 26; T 17 S, R 50 E. SW¼, W½SE¼S. 1; NW¼NE¼, N½NW¼S. 12; SW¼SW¼S. 13; W½NW¼ S. 24; T 18 S, R 50 E. SE¼SW¼, SW¼SE¼S. 7; N½NW¼, E½SW¼S. 18; NE¼NW¼S. 19; T 18 S, R 51 E.

Known primary constituent elements include dry, hard, white, barren saline, clay flats, knolls, and slopes.

* * * * *

9. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the spring-loving centaury as follows:

* * * * *

Family Gentianaceae: Spring-loving centaury

(Centaurium namophilum var. *namophilum)*

Nevada, Ney County, Ash Meadows: SW¼NE¼, SE¼NW¼, E½SW¼, W½ SE¼S. 21; W½NW¼S. 23; NW¼NE¼, NE¼ NW¼S. 28; SE¼SE¼S. 34; SW¼SW¼, E½ SW¼S. 35; T 17 S, R 50 E. SW¼S. 1; NE¼ NW¼, W½NW¼S. 2; E½NE¼S. 3; NE¼S. 7; SE¼SE¼S. 23; SE¼SW¼S. 24; T 18 S, R 50 E. NW¼SE¼S. 7; S½NW¼, SW¼S. 18; NW¼, NE¼SE¼S. 19; E½SW¼S. 20; N½ NW¼S. 29; NE¼NW¼S. 30; T 18 S, R 51 E.

Known primary constituent elements include moist to wet clay soils along banks of streams or in seepage areas.

* * * * *

10. It is further proposed to amend § 17.96(a) by adding Critical Habitat of the Ash Meadows blazing star as follows:

* * * * *

Family Loasaceae: Ash Meadows blazing star

(Mentzelia leucophylla)

Nevada, Nye County, Ash Meadows: SW¼SW¼S. 15; S½NE¼, N½SE¼, SW¼SE¼S. 21; NW¼NW¼, S½NW¼, NE¼SE¼S. 22; NW¼SW¼S. 23; NW¼NE¼S. 28; SE¼SW¼, SE¼S. 35; SW¼SW¼S. 36; T 17 S, R 50 E. NW¼NW¼, SW¼SW¼, E½SW¼, E½SW¼S. 1; NE¼NE¼, S½SE¼S. 2; N½NE¼S. 11; NW¼S. 12; T18 S, R 50 E.

Known primary constituent elements include sandy or saline clay soils along canyon washes and near springs and seeps.

* * * * *

11. It is further proposed to amend § 17.96(a) by adding the Critical Habitat of the Ash Meadows ivesia as follows:

* * * * *

Family Rosaceae: Ash Meadows ivesia

(Ivesia eremica)

Nevada, Nye County, Ash Meadows: SW¼NE¼, W½SE¼S. 21; S½SW¼, SW¼SE¼S. 35; T 17 S, R 50 E. SW¼S. 1; N½NW¼, SW¼SW¼S. 2; NE¼NE¼S. 3; NW¼NE¼S. 12; N½NE¼, SE¼NE¼S. 23; N½NW¼, SW¼NW¼, NW¼SW¼S. 24; T 18 S, R 40 E.

Known primary constituent elements include saline seep areas of light-colored clay uplands.

* * * * *

Dated: September 20 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-27670 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 48, No. 199
Thursday, October 13, 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.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Chuquatonchee Creek Watershed, Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Soil Conservation Service Guidelines (7 CFR Part 650); and the Soil Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Chuquatonchee Creek Watershed, Monroe, Clay, Chickasaw, and Pontotoc Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. E. Sullivan, State Conservationist, Soil Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 960–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, A. E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include nine floodwater retarding structures, 7.3 miles of floodway, 46.7 miles of selective snagging, 1.2 miles of new channel and 3.9 miles of clearing and snagging.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting A. E. Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: October 3, 1983.

A. E. Sullivan,

State Conservationist.

[FR Doc. 83–27771 Filed 10–12–83; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of Secretary

President's Commission on Industrial Competitiveness; Committee on Research, Development and Manufacturing (a Subcommittee of the President's Commission on Industrial Competitiveness); Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and Place

October 25, 1983, 9:00 a.m., Suite 755, Essex House, 160 Central Park South, New York City, New York 10019.

Because of scheduling problems and difficulties in finding an appropriate location, less than 15 days notice is being given.

Agenda

To discuss workplan of the Committee regarding Research, Development and Manufacturing.

Public Participation

The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Egils Milbergs, Deputy Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202–377–1581 on substantive issues or Yvonne Barnes, Departmental Committee Management Analyst, 202–377–4217 on issues regarding administration of the Commission.

Dated: October 7, 1983.

Egils Milbergs,

Deputy Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 83–27855 Filed 10–7–83; 4:19 pm]

BILLING CODE 3510–16–M

Foreign-Trade Zones Board

[Docket No. 37–83]

Proposed Foreign-Trade Zone—Chatham County, Georgia Within the Savannah Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, a Georgia public corporation, requesting authority to establish a general-purpose foreign-trade zone in Chatham County, Georgia, within the Savannah Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 30, 1983. The applicant is authorized to make this proposal under Title 52, Chapter 10 of the Official Code of Georgia.

The proposed zone will cover 37 acres on sites at the area's airport and seaport. Site I will involve 4 parcels

totalling 25 acres at the 3400-acre Savannah Municipal Airport in Savannah. An air cargo building is available for initial zone warehousing activities. There is also open space for firms needing separate facilities. Site II will cover 12 acres at the 800-acre Garden City Terminal of the Georgia Ports Authority on the Savannah River in Chatham County. Both sites will be operated by the Airport Commission. Savannah International Warehouse, Inc., will build and operate a public warehouse within Site II.

The application contains evidence of the need for zone services in the Savannah area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of products such as aircraft, electronic and food products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Charles W. Winwood, Director, Inspection and Control, U.S. Customs Service, Southeast Region, 55 S.E. 5th St., Miami, FL 33131; and Colonel Charles A. Dominy, District Engineer, U.S. Army Engineer District Savannah, P.O. Box 889, Savannah, GA 31402.

As part of its investigation the examiner's committee will hold a public hearing on Nov. 2, 1983, beginning at 9:00 a.m. in Council's Chambers at the Savannah City Hall.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by October 28. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through December 2, 1983.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Director's Office, U.S. Dept. of Commerce District Office, 27 E. Bay Street, P.O. Box 9746, Savannah, GA 31401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20230.

Dated: October 6, 1983.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 83-27859 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Countervailing Duty Investigations; Textiles, Apparel, and Related Products From the People's Republic of China

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigations.

SUMMARY: On the basis of a petition filed with the U.S. Department of Commerce, we are initiating countervailing duty investigations to determine whether producers, manufacturers, or exporters in the People's Republic of China of textiles, apparel and related products, described in Appendix A to this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. The decision to initiate does not imply any judgment whether the practices concerned are in fact bounties or grants. If our investigations proceed normally, we will make our preliminary determinations on or before December 6, 1983.

These investigations present significant and novel issues. Interested persons are invited to submit written views and to participate in a public conference on November 3 (continuing November 4 if necessary) on the issues raised by this petition, including the following issues: (1) Whether under the Act bounties or grants may be found in a non-market economy country; and (2) whether dual exchange rates in either a market or non-market economy can confer a bounty or grant where the entire trade sector is subject to a single rate and the currency is not freely convertible.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: Claire A. Rickard, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202) 377-4412.

SUPPLEMENTARY INFORMATION:

Petition

On September 12, 1983, we received a petition from counsel for the American textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union (later amended to include the American Apparel Manufacturers Association) on behalf of the U.S. industries producing textiles, apparel and related products. The petition alleges that producers, manufacturers, or exporters in the People's Republic of China (PRC) of those products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). Petitioners allege that the PRC provides the following benefits to its domestic producers of textiles, apparel, and related products:

—An "internal settlement rate" used to convert foreign exchange for Chinese enterprises engaged in foreign trade;
—preferential access to raw materials;
—foreign exchange loans;
—transportation; and
—preferential tax treatment.

The PRC is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore section 303 of the Act applies to these investigations. Under this section, because the merchandise under investigation is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

Initiation of Investigations

Although section 303 of the Act applies to these proceedings, section 103(b) of the Trade Agreements Act of 1979 requires conformity with certain provisions of Title VII of the Act, including section 702. That section sets forth the procedures for initiating a countervailing duty investigation.

Under section 702(c)(1) of the Act, we must determine, within 20 days after a countervailing duty petition is filed, whether a petition alleges the elements necessary for the imposition of a countervailing duty under section 701(a) of the Act, and contains information reasonably available to petitioner supporting the allegations. In accordance with section 702(c)(1), we are dismissing that part of the petition alleging bounties or grants with respect to transportation and preferential tax treatment because the petition contains no information supporting these allegations. We are also dismissing that aspect of the petition regarding foreign exchange loans because petitioners

have not alleged how such loans, if they exist, constitute a bounty or grant within the meaning of the Act.

We are initiating countervailing duty investigations with respect to the remaining allegations to determine whether manufacturers, producers, or exporters in the PRC of textiles, apparel and related products as described in Appendix A to this notice, receive bounties or grants through dual exchange rates [1] or preferential access to raw materials. If our investigations proceed normally, we will make preliminary determinations by December 6, 1983.

[1] The petition states that "there are indications that additional internal exchange rates exist * * * to increase the amount of the export subsidy to the particular industry." Even if petitioners intended to allege that "additional internal exchange rates" benefit the PRC textiles and apparel industries, they provided no supporting information.

Hearing on Novel Issues

In view of the novelty of issues raised by the petition, we invite written comments and participation in a conference to which all persons interested in these issues are invited. The issues for comment include: (1) Whether under the Act a bounty or grant may be found in a non-market economy country; and (2) whether dual exchange rates can confer a bounty or grant where the entire trade sector is subject to a single rate and the currency is not freely convertible. The conference will be held on November 3 (continuing November 4 if necessary) at 9 a.m. in Room 3407 at the Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. This conference will not in any way replace the hearing, if requested, provided under section 774 of the Act.

Persons who wish to participate in the conference must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The person's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, participants must file preconference briefs in accordance with 19 CFR 355.34 and in at least 10 copies by October 27, 1983.

Oral presentations will be limited to issues raised in the briefs. Those wishing to appear will be notified of their time allocations.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

October 3, 1983.

Appendix A

The products covered by these investigations are textiles, apparel and related products, including those of all textile fibers.

The merchandise is currently classified under the item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed below.

LIST OF TSUSA CODES IN WHICH THE PEOPLE'S REPUBLIC OF CHINA PARTICIPATED IN IMPORTS OF THE UNITED STATES IN 1982 OR 1983

Yarns									
		302.5024	303.2040	307.6810	307.6850	308.3000	308.3500		
			308.5100	308.7500	308.9000	310.5049	310.6038	308.3500	
Cordage									
				315.8000					
				316.5500					
				316.5800					
Fabric									
319.0700	320.0036	320.0058	320.1001	320.1003	320.1036	320.1040	320.1044	320.1058	320.1092
320.2030	320.2032	320.2036	320.2044	320.2058	320.2092	320.2094	320.3026	320.3028	320.3030
320.3032	320.3036	320.3092	320.4092	320.4094	320.8094	321.1058	321.3044	321.3060	321.3092X
321.4092									321.3092
	321.4094	231.7028	321.8028	322.1026	322.1044	322.1058	322.1076	322.1078	322.1084
322.1092	322.2030	322.2032	322.2054	322.2072	322.2092	322.2094	322.3026	322.3054	322.3060
322.3064	322.3092	322.4054	322.4084	322.4092	322.4094	322.8086	322.8094	323.1092	323.3092
324.1052	324.1092	324.3052	324.8024	324.8024	325.1072	325.1074	325.1084	325.1092	325.2072
325.3092	325.8064	326.0094	326.1026	326.1038	326.1040	326.1058	326.1092	326.2026	326.2032
326.2038	326.2044	326.2058	326.2092	326.3026	326.3032	326.3038	326.3042	326.3044	326.3090
326.3092	326.3094	326.4026	326.4032	326.4092	326.6022	327.2092	328.1074	328.2084	328.3032
328.3092	328.4084	328.4092	331.4020	331.8090	335.7500	335.9500	336.1520	336.5000	336.6241
336.6243	336.6247	336.6249	336.6251	336.6253	336.6255	336.6257	336.6441	336.6447	336.6449
336.6453	337.1000	337.2010	337.2020	337.2030	337.2040	337.2050	337.3000	337.4000	337.5050
337.5500	337.6025	337.6800	337.7200	337.9025	337.9035	338.1530	338.1570	338.2500	338.2700
338.4003	338.4004	338.5006	338.5009	338.5015	338.5021	338.5024	338.5026	338.5029	338.5033
338.5035	338.5036	338.5039	338.5041	338.5045	338.5046	338.5050	338.5064	338.5069	
Special Construction Fabrics									
	346.1000	346.3545	346.5605	346.5625	346.5635	346.6050	346.6065	347.3360	349.3060
	351.0500	351.2060	351.2095	351.2510	351.2560	351.4610	353.5036	353.5042	353.5067
	355.0200	355.1600	355.2000	356.4530	356.6510	357.7010	358.1600	359.4000	359.5000
Textile Furnishings									
360.0600	360.1020	360.1515	360.1520	360.3000	360.4215	360.4225	360.4440	360.4445	360.4615
360.4625	360.4815	360.4825	360.4835	360.4855	360.7000	360.7700	360.7800	360.7900	360.8200
360.8300	360.8400	361.0520	361.0540	361.1000	361.1840	361.2600	361.4300	361.4500	361.4600
361.4600	361.5000	361.5300	361.5420	361.5426	361.5650	361.5660	363.0120	363.0140	363.0200
363.0510	363.0515	363.0520	363.0525	363.0530	363.1040	363.2550	363.2562	363.2564	363.2575

LIST OF TSUSA CODES IN WHICH THE PEOPLE'S REPUBLIC OF CHINA PARTICIPATED IN IMPORTS OF THE UNITED STATES IN 1982 OR 1983—Continued

363.2560	363.2590	363.3010	363.3020	363.3030	363.3040	363.4500	363.5115	363.5130	363.6015
363.6030	363.6540	363.7000	363.8000	363.8512	363.8525	363.8550	363.8555		364.0700
364.1300	364.1600	364.1800	364.2100	364.2300	364.2500	364.3000	364.3500	365.0000	365.0500
365.1120	365.1410	365.1420	365.1500	365.2900	365.3195	365.5010	365.5060	365.5095	365.6800
365.7200	365.7410	365.7460	365.7495	365.7600	365.7695	365.7700	365.7815	365.7817	365.7855
365.7865	365.8000	365.8100	365.8300	365.8400	365.8610	365.8620	365.8640	365.8660	365.8670
365.8680	365.9110	365.9120	366.1820	366.1840	366.1855	366.1865	366.1880	366.2120	366.2140
366.2160	366.2180	366.2420	366.2440	366.2460	366.2480	366.2720	366.2740	366.2760	366.2780
366.3000	366.3300	366.3900	366.4200	366.4600	366.4700	366.5100	366.5400	366.5720	366.6000
366.6300	366.6500	306.6900	366.7200	366.7500	366.7700	366.7925	366.7930	366.8400	367.1500
367.4000	367.4500	367.5500	367.6025	367.6035	367.6040	367.6080	367.6500		

Apparel

370.0400	370.0800	370.1200	370.1600	370.1700	370.1900	370.2100	370.4800	370.5200	370.6020
370.6040	370.6420	370.6820	370.8000	370.8420	370.8440	372.1020	372.1030	372.1036	372.1060
372.1070	372.1540	372.3500	372.4500	372.5000	372.6020	372.6520	372.6540	372.7000	372.7520
373.2200	374.3550	374.5500	374.6040	376.2430	376.2446	376.2825	376.2830	376.5609	376.5612
376.5618	376.5623	376.5630	378.0550	378.0553	378.0560	378.0580	378.1030	378.1035	378.1520
378.1530	378.1535	378.1540	378.2011	378.2030	378.3510	378.3530	378.5000	378.5500	378.6015
378.6020	378.6030	378.6530	379.0210	379.0220	379.0240	379.0405	379.0410	379.0610	379.0615
379.0620	379.0630	379.0640	379.0645	379.0820	379.0840	379.1520	379.1740	379.2310	379.2320
379.2330	379.2350	379.2360	379.2610	379.2620	379.2630	379.2640	389.2650	379.2810	379.2820
379.2830	379.3110	379.3120	379.3130	379.3140	379.3160	379.3170	379.3180	379.3190	379.3310
379.3320	379.3330	379.3332	379.3336	379.3338	379.3340	379.3350	379.3530	379.3540	379.3905
379.3925	379.3930	379.3940	379.3950	379.4010	379.4020	379.4030	379.4040	379.4050	379.4060
379.4070	379.4330	379.4610	379.4615	379.4620	379.4640	379.4650	379.4660	379.4670	379.4820
379.4910	379.4920	379.5210	379.5220	379.5221	379.5510	379.5520	379.5525	379.5530	379.5535
379.5540	379.5545	379.5550	379.5555	379.5560	379.5565	379.5600	379.5700	379.5800	379.6210
379.6215	379.6220	379.6230	379.6240	379.6250	379.6260	379.6270	379.6280	379.6300	379.6410
379.6420	379.6430	379.6440	379.6450	279.6470	379.6904	379.6908	379.6924	279.6964	379.6976
379.6984	379.6992	379.7250	379.7400	379.7530	379.7605	379.7610	379.7620	379.7630	379.7640
379.7650	379.7850	379.7900	379.8311	379.8315	379.8318	379.8340	379.8351	380.8352	379.8355
379.8360	379.8410	379.8420	379.8635	379.8725	379.8735	379.8905	379.8906	379.8910	379.8911
379.8915	379.8930	379.8935	379.8940	379.9010	379.9020	379.9025	379.9030	379.9035	379.9040
379.9250	379.9505	379.9510	379.9515	379.9520	379.9525	379.9530	379.9535	379.9540	379.9545
379.9550	379.9555	379.9560	379.9565	379.9570	379.9575	379.9580	379.9585	379.9605	379.9620
379.9625	379.9630	379.9635	379.9643	379.9645	379.9650	383.0015	383.0205	383.0206	383.0210
383.0211	383.0215	383.0218	383.0221	383.0225	383.0233	383.0250	383.0260	383.0265	383.0305
383.0306	383.0320	383.0330	383.0335	383.0340	383.0350	383.0355	383.0390	383.0505	383.0506
383.0520	383.0570	383.0610	383.0611	383.0615	383.0618	383.0620	383.0630	383.0805	383.0810
383.0815	383.0820	383.0825	383.0830	383.0835	383.0840	383.0841	383.0844	383.0845	383.0850
383.0855	383.0856	383.0860	383.1305	383.1320	383.1802	383.1803	383.1807	383.1808	383.1820
383.1841	383.1842	383.1857	383.1860	383.1905	383.1910	383.1930	383.1935	383.1940	383.2005
383.2014	383.2016	383.2020	383.2025	383.2035	383.2050	383.2052	383.2058	383.2060	383.2205
383.2210	383.2215	383.2220	383.2225	383.2230	383.2235	383.2240	383.2245	383.2250	383.2305
383.2310	383.2315	383.2320	383.2325	383.2330	383.2335	383.2340	383.2345	383.2350	383.2352
383.2354	383.2355	383.2356	383.2360	383.2365	383.2505	383.2515	383.2520	383.2525	383.2535
383.2550	383.2570	383.2575	383.2580	383.2590	383.2706	383.2707	383.2708	383.2709	383.2720
383.2725	383.2730	383.2731	383.2750	383.2551	383.2810	383.2815	383.2820	383.2830	383.2835
383.2836	383.2910	383.2920	383.3010	383.3020	383.3030	383.3040	383.3050	383.3060	383.3065
383.3070	383.3080	383.3085	383.3092	383.3200	383.3405	383.3415	383.3435	383.3440	383.3445
383.3446	383.3448	383.3450	383.3452	383.3455	383.3460	383.3465	383.3466	383.3600	383.3770
383.4010	383.4015	383.4200	383.4300	383.4515	383.4702	383.4704	383.4705	383.4707	383.4709
383.4711	383.4715	383.4720	383.4721	383.4730	383.4747	383.4749	383.4753	383.4755	383.4757
383.4759	383.4761	383.4763	383.4765	383.4816	383.4818	383.4820	383.4821	383.4825	383.4900
383.5020	383.5030	383.5035	383.5036	383.5038	383.5039	383.5040	383.5047	383.5049	383.5050
383.5052	383.5053	383.5055	383.5056	383.5060	383.5061	383.5062	383.5063	383.5065	383.5066
383.5070	383.5071	383.5072	383.5073	383.5075	383.5078	383.5080	383.5082	383.5086	383.5090
383.5295	383.5304	383.5308	383.5312	383.5316	383.5326	383.5332	383.5368	383.5376	383.5382
383.5386	383.5392	383.5395	383.5500	383.5830	383.5840	383.5845	383.6000	383.6200	383.6310

Apparel

383.6330	383.6340	383.6345	383.6350	383.6360	383.6371	383.6372	383.6395	383.6520	383.6650
383.7205	383.7210	383.7530	383.7540	383.7550	383.7560	383.7590	383.7732	383.7752	383.7764
383.7768	383.7772	383.7776	383.7782	383.7804	383.7812	383.7818	383.7822	383.7842	383.7844
383.7852	383.7854	383.7858	383.7862	383.7864	383.7866	383.7872	383.7874	383.7878	383.7882
383.8002	383.8003	383.8004	383.8005	383.8006	383.8043	383.8044	383.8045	383.8047	383.8070
383.8073	383.8110	383.8114	383.8115	383.8116	383.8117	383.8126	383.8135	383.8140	383.8145
383.8146	383.8100	383.8605	383.8620	383.8621	383.8635	383.8640	383.8645	383.8650	383.8660
383.8663	383.8665	383.8669	383.8670	383.8820	383.9010	383.9015	383.9020	383.9025	383.9030
383.9035	383.9036	383.9040	383.9041	383.9050	383.9051	383.9060	383.9065	383.9070	383.9071
383.9210	383.9211	383.9215	383.9220	383.9225	383.9230	383.9235	383.9240	383.9245	383.9246
383.9255	383.9260	383.9265	383.9270	383.9273	383.9276	383.9290	383.9291	383.9505	

Miscellaneous

385.3000		385.5300	385.5500	385.6000	385.7040	385.8500	386.0430	386.0600	386.0915
386.0925	386.0943	386.0960	386.1000	386.1315	386.1325	386.1343	386.1360	386.1500	386.3000
386.4000	386.5038	386.5040	386.5045	387.3200	387.3500	387.3700	388.4000	389.1000	389.2000
389.3000	389.4000	389.5000		389.6255	389.6265	389.7000			
702.0600	702.0800	702.1200	702.1400						
				702.5600	702.6000	702.7000	702.7500	792.8000	702.8500
702.9000	702.4500	703.0500	703.1000	703.1515	703.1600				
		704.0520	704.1020	704.1520	704.2000	704.3220	704.3240	704.4010	704.4025
704.4502	704.4504	704.4506	704.4508	704.4526	704.5015	704.6500	704.7000	704.7500	704.8520
704.8550	704.9000								
					706.3200	706.3400	706.3640	706.3650	706.3680
706.3700	706.3840	706.3850	706.3900		706.4106	706.4111	706.4121	706.4140	706.4150

LIST OF TSUSA CODES IN WHICH THE PEOPLE'S REPUBLIC OF CHINA PARTICIPATED IN IMPORTS OF THE UNITED STATES IN 1982 OR 1983—Continued

727.8200 748.4565	748.4570	748.5048	748.4541 748.5050	748.4543 748.5065	748.4547 748.5067	738.4549 748.5520	748.4553	748.4555	748.4563

[FR Doc. 83-27579 Filed 10-12-83 8:45 am]
BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Applications

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of export Trading Company Affairs, International Trade Administration, Department of Commerce has received applications for Export Trade Certificates of Review. This notice summarizes the conduct for which certificates are sought and invites interested parties to submit information relevant to the determination of whether the certificates should be issued.

DATES: Comments on these applications must be submitted on or before November 2, 1983.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to these applications as "Export Trade Certificate of Review, application number 83-00023 and/or application number 83-00024."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not tollfree numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the issuance of Export Trade Certificates of Review," 48 FR 15937-10 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting the application and summarizing the conduct proposed for certification.

The OETCA and the applicants have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the applications below. Information submitted by any person in connection with the applications is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities" or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: *United Export Trading Association, IH 35,* International Boulevard, Laredo, Texas 78041.

Application No.: 83-00023.

Date Received: September 23, 1983.

Date Deemed Submitted: September 27, 1983.

Members in Addition to Applicant: International Bonded Warehouses, Inc., IH 35 at International Boulevard, Laredo, Texas 78041; Ayoub Exports, Inc., 8650 Yermoland, El Paso, Texas 79983; Hidalgo Custom Bonded Warehouse, Inc. d/b/a Brady's, 104 South Bridge Street, Hidalgo, Texas 78557; Universal Bonded Stores, Inc., 1114-1116 Main Avenue, Laredo, Texas 78040; Capin's Duty Free Warehouse, 109 Nelson Avenue, Nogales, Arizona 85621; States Import-Export, Inc., Lot 2 at Entrada Development at Bridge Street, Hidalgo, Texas 78557; and Hugo's International Liquors, 6906 Commerce Avenue, El Paso, Texas 79915.

Summary of Application: The following is the summary of the export trade and export trade activities and methods of operation of United Export Trading Association (UETA), an unincorporated association comprised of member firms engaged in operating land port duty-free shops under U.S. Customs bonds and regulations on the U.S. side of the United States-Mexico border.

A. Export Trade

UETA will act as the exclusive purchasing agent for its member firms for tax-free and duty-free alcoholic beverages, tobacco and tobacco products and other products that are handled in bond exclusively for export trade (hereafter the "covered products") which the member firms, operating pursuant to U.S. Customs regulations and under Customs bond, sell exclusively for export to persons exiting the United States across the United States-Mexico land border.

B. Export Trade Activities and Methods of Operation

1. UETA will enter into agreements with suppliers for the purchase of covered products and will resell the covered products to its member firms exclusively for export.

2. UETA will warehouse the covered products prior to delivery to member firms and will provide related financing, transportation, insurance, accounting, and legal services.

3. Through UETA, the member firms may agree on all matters relating to the purchase, handling and sale of the covered products including the number of outlets for the covered products to be established in any location; the mix of products which UETA will supply; inventory levels of the covered products; the prices at which covered products may be sold for export; the internal distribution of profits or loss derived by UETA from the sale of covered products; the hours of operations of member outlets; the admission or exclusion of new members; and the sale of covered products or related services to non-members.

4. Subject to decisions of its governing committee, UETA will be the exclusive source of covered products for the member companies. The governing committee of UETA may impose territorial or price maintenance restrictions on its members or on non-members and may deal or refuse to deal with non-member outlets at its option and under such terms as the governing committee determines.

Applicant: *U.S. Export & Trading Company, P.O. Box 1698, Carlsbad, California 92008.*

Application #: 83-00024.

Date Received: September 23, 1983.

Date Deemed Submitted: September 27, 1983.

Members in Addition to Applicant: None.

Summary of Application: U.S. Export & Trading Company, a U.S. export trading company, incorporated in the State of California and located at P.O. Box 1698, Carlsbad, California 92008, submitted an application seeking certification for the following export trade activities and methods of operation and for its export trade worldwide.

A. Export Trade

U.S. Export & Trading Company represents a U.S. manufacturer of patented Ultraviolet Resistant PVC (UVR-PVC) irrigation pipe for export sales of this product.

B. Activities/Methods of Operation

U.S. Export & Trading Company is the sole representative of a U.S. manufacturer of patented Ultraviolet Resistant PVC irrigation pipe under an exclusive distribution agreement with respect to export sales. Under this exclusive distribution agreement, U.S. Export & Trading Company represents the manufacturer in foreign markets, identifies foreign stocking distributors for appointment by the manufacturer to exclusive distributorships, and is responsible for all details of exporting the manufacturer's products. The manufacturer agrees not to sell directly to other exporters in competition with U.S. Export & Trading Company.

Dated: October 7, 1983.

Irving P. Margulies,

Deputy General Counsel.

[FR Doc. 83-27799 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; University of Wisconsin, 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.: 83-248. Applicant: University of Wisconsin, Department of Anatomy, 1300 University Avenue, Madison, WI 53706. Instrument: Electron Microscope, Model H-600 with Accessories. Manufacturer: Hitachi Limited, Japan. Intended use of instrument: See notice on page 36505 in the **Federal Register** of August 11, 1983. Instrument ordered: April 29, 1983.

Docket No.: 83-253. Applicant: University of Wisconsin Medical School, Department of Ophthalmology, 600 Highland Avenue, Madison, WI 53792. Instrument: Electron Microscope, Model H-600-3 and Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of instrument: See notice on page 36505 in the **Federal Register** of August 11, 1983. Instrument ordered: March 29, 1983.

Docket No.: 83-263. Applicant: University of California, Davis, Department of Zoology, Storer Hall, Davis, CA 95616. Instrument: Electron Microscope, Model EM 410G and Accessories. Manufacturer: N. V. Philips Gloeilampenfabrieken, The Netherlands. Intended use of instrument: See notice on page 36504 in the **Federal Register** of August 11, 1983. Instrument ordered: June 27, 1983.

Docket No.: 83-265. Applicant: Thomas Jefferson University, 1025 Walnut Street, Philadelphia, PA 19107. Instrument: Electron Microscope, EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See notice on page 38869 in the **Federal Register** of August 26, 1983. Application received by Commissioner of Customs: August 1, 1983.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each instrument establishes the fact that a comparable CTEM is pertinent to the purposes of which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each instrument described above or at the time of receipt of application by U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States either at the time of order or at the time of

receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-27778 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council (Council Chairpersons/ Executive Directors/NMFS); Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended). The Gulf Council's Chairperson and Executive Director will meet jointly with the National Marine Fisheries Service (NMFS), and Chairpersons and Executive Directors of the following Regional Fishery Management Councils:

New England Council (Saugus, Massachusetts)
Mid-Atlantic Council (Dover, Delaware)
South Atlantic Council (Charleston, South Carolina)
Caribbean Council (Hato Rey, Puerto Rico)
Pacific Council (Portland, Oregon)
North Pacific Council (Anchorage, Alaska)
Western Pacific Council (Honolulu, Hawaii)

Agendas: The Council Executive Directors will meet to discuss:

Confidentiality procedures for Councils
Proposed Council operations guidelines
OMB modification of rules
Impacts of budget reduction on Council operations
Inclusion of fishery products in U.S. Agency for International Development commodities program
Theory of management
Effectiveness of framework measures
Responsiveness of NMFS to Council research requirements
Need for Council liaison staff in Washington
Other general administrative topics

The Council Chairpersons will meet to discuss:

Future of fisheries management under the Magnuson Act Budget
Council access to confidential statistics
Federal regulation outside the fishery conservation zone
Litigation affecting fishery management plans and Council operations
Current legislative bills affecting fisheries management
NMFS habitat conservation policy
Joint venture issues
Report on Executive Directors' session
Other business

DATE: The Executive Directors' meeting will convene at 8:30 a.m., on Wednesday, November 2, 1983, and recess at approximately 5 p.m. The Council Chairpersons' meeting will convene at 8:30 a.m., on Thursday, November 3, 1983; recess at approximately 5 p.m.; reconvene on Friday, at 8:30 a.m., and adjourn at approximately 3 p.m., on Friday, November 4, 1983.

ADDRESS: The meeting will be held in the Stardust Room of the Hilton Hotel, 3580 West Beach Boulevard, Biloxi, Mississippi.

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: October 6, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-27736 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended).

Agendas:

The Gulf of Mexico Fishery Management Council will meet to discuss:

—Intercouncil Committee Action on Swordfish FMP
—Mackerel FMP Amendment Options
—Amendment to Shrimp and Stone Crab FMPs
—Appointment of Council Committee Members

DATES: The Council meeting will convene at 8:30 a.m., on Wednesday, November 16, 1983, and recess at approximately 5:00 p.m.; and reconvene at 8:30 a.m., Thursday, November 17, 1983, and adjourn at approximately 2:00 p.m.

ADDRESS: The meeting will be held at the Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, Florida, 33607.

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: October 7, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-27862 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council, Intercouncil Mackerel Advisory Panel and Intercouncil Mackerel Management Committee; Public Meeting

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

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), will convene Intercouncil Mackerel Advisory Panel members and Intercouncil Mackerel Management Committee members to amend the Mackerel Fishery Management Plan.

DATES: The advisory panel meeting will be convened at 2:00 p.m. on Monday, November 7, 1983, and will adjourn at approximately 5:00 p.m.; and reconvene at 8:00 a.m., Tuesday, November 8th, 1983, and adjourn at approximately 11:00 a.m. The management committee meeting will be convened at 2:00 p.m. on Tuesday, November 8, 1983, and will adjourn at approximately 6:00 p.m.; and reconvene at 8:00 a.m. on Wednesday, November 9, 1983; and adjourn at approximately 5:00 p.m.

ADDRESS: The meeting will take place at the Barclay Best Western Hotel, 5303 West Kennedy Boulevard, Tampa, Florida 33609.

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: October 7, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-27863 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council's Groundfish Management Team; Public Meetings

AGENCY: Pacific Fishery Management Council's Groundfish Management Team.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council has established a Groundfish Management Team (GMT) which will meet to discuss current groundfish management matters, develop objectives of a trawl mesh size study, develop final specifications for 1984 acceptable biological catches and optimum yields, review options recommended to the Council by the Groundfish Task Force to manage 1984 fisheries, develop a report to the Council at its November 9–10, 1983 meeting in Boise, Idaho, and other matters as directed by the Council. Time is scheduled for public comment at 3 p.m. and members of the public will be permitted to submit oral or written statements regarding these matters.

DATES: October 24, 1983 from 10 a.m. to 5 p.m.; October 25 and 26, 1983 from 8 a.m. to 5 p.m.

ADDRESS: The meeting will be held at the Oregon Department of Fish and Wildlife, 506 S.W. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW Mill Street, Portland, Oregon 97201, (503–221–6352).

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

Dated: October 7, 1983.

Carmen J. Blondin,

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

[FR Doc. 83-27881 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Comments on Foreign Fishing Applications

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Opportunity for Public Comments on Foreign Fishing Applications Received by the Mid-Atlantic Fishery Management Council.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended). As required by the Act, Section 204(b)(5), the Council announces that the public may comment on any and all foreign fishing applications received by the Council by November 7, 1983. The Council's staff will be available between 9 a.m. and noon on November 7, 1983, to receive comments, which may be made in person at the Council's Headquarter's Office, Federal Building, Room 2115—300 South New Street, Dover, Delaware, between the above-stated hours. In addition, written comments must be mailed in time to be received and reviewed by the Council, by November 7, 1983.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: October 7, 1983.

Carmen J. Blonding,

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

[FR Doc. 83-27884 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton, Wool, and Man-Made Fiber Apparel Products From Taiwan

October 7, 1983

Adjusting by the application of swing the levels of restraint established for cotton trousers in Category 347/348, wool sweaters in Category 445/446, women's, girls', and infants' trousers in Category 648, and down and feather-filled coats, jackets, and vests in Category 353/354/653/654, produced or manufactured in Taiwan and exported during the agreement year which began on January 1, 1983 and extends through December 31, 1983.

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), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

SUMMARY: The bilateral agreement of November 18, 1982, concerning cotton, wool, and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year (swing), provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year. Pursuant to the terms of the bilateral agreement, the import restraint limits established for Categories 347/348, 445/446, and 648, exported during the twelve-month period which began on January 1, 1983, are being increased for the agreement year which began on January 1, 1983. The limit for Category 353/354/653/654 is being reduced from 219,406 dozen to 153,674 dozen to account for swing applied to the other three categories.

EFFECTIVE DATE: October 13, 1983.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 22, 1982, there was published in the **Federal Register** (47 FR 57083) a letter dated December 16, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool, and man-made textile products, including Categories 347/348, 445/446, 648, and 353/354/653/654, produced or manufactured in Taiwan, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, if exported during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the levels of restraint previously established for these categories.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 7, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 16, 1982, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of goods exported during the twelve-month period beginning on January 1, 1983 and extending through December 31, 1983 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the bilateral agreement of November 18, 1982 concerning cotton, wool, and man-made fiber textile products from Taiwan, which provide.

Continued

Effective on October 13, 1983, the directive of December 16, 1982 is hereby further amended to adjust the levels of restraint established for Categories 347/348, 445/446, 648, and 353/354/653/654 to the following:

Category	Adjusted 12-mo. level of restraint[1]
347/348	963,630 doz. of which not more than 473,270 doz. shall be in Cat. 347 and not more than 764,030 dozen shall be in Cat. 348.
445/446	132,600 doz.
648	3,182,339 doz.
353/354/653/654	163,674 doz.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1982.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton, wool and man-made fiber textile products from Taiwan 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.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27857 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-25-M

Controlling Imports of Certain Wool Apparel Products From Mexico

October 7, 1983.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 13, 1983. For further information contact William Boyd, International Trade Specialist, 202/377-4212.

Background

Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, the Government of the United States has decided to control imports of women's, girls' and infants' wool suits in Category 444, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1983 at the agreement level of 1,852 dozen. Charges of 1,807 dozen are being made to the level to account for imports in the category during the period January 1–August 31, 1983. As the data become available, further charges will be made to account for the period which began on September 1 and extends through the effective data of this action, as well as thereafter. The letter from the Chairman of CITA to the Commissioner of customs, which follows this notice implements this action.

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), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 7, 1983.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

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 February 26, 1979, as amended, and extended between the Governments of the United States and Mexico; 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 October 13, 1983, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Mexico and exported on and after January 1, 1983 and extending through December 31, 1983, in excess of 1,852 dozen.[1]

Textile products in Category 444 which have been exported to the United States prior to January 1, 1983 shall not be subject to this directive.

Textile products in Category 444 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

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 F.R. 55709), as amended on April 7, 1983 (48 F.R. 15175) and May 3, 1983 (48 F.R. 19924)).

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 Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-27856 Filed 10-12-83; 8:45 am]

BILLING CODE 3510-25-M

in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits and sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal quantity in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[1] The level of restraint has not been adjusted to reflect any imports exported after December 31, 1982. During the period January 1–August 31, 1983 imports in this category have amounted to 1,807 dozen.

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Graduate and Professional Opportunity Fellowships Program; Application Notice for Fiscal Year 1984

Applications from institutions of higher education for grants to make fellowship awards are invited under the Graduate and Professional Opportunity Fellowships Program (G*POP).

Authority for this program is contained in Part B of Title IX of the Higher Education Act of 1965, as amended. (20 U.S.C. 1134d–1134g)

The Graduate and Professional Opportunity Fellowships Program provides grants to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who are from groups which are traditionally underrepresented in graduate and professional study areas of high national priority.

Closing Date for Transmittal of Applications: An application for a grant must be postmarked or hand delivered by December 5, 1983.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.094, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Post Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds: The Continuing Resolution enacted by the Congress on September 30, 1983, authorizes the funding level of $10,000,000 for this program for fiscal year 1984. Pending resolution of the final level of appropriations, applications are invited to allow sufficient time for their evaluation and for the completion of the grant process prior to the end of the fiscal year should funds become available. The Secretary will give first priority to providing continuation support for fellows in good academic standing in their second or third year of study. If there are sufficient funds available, the Secretary plans to allocate one to three new fellowships in each approved academic or professional area of study to an institution receiving an award. Congress will be asked again this year, if funds are appropriated, to waive the minimum $75,000 fellowship award to each institution.

Program Information: Each institutional applicant applying for new fellowships under this Application Notice will be ranked according to the selection criteria set out as 34 CFR 649.12, governing the Graduate and Professional Opportunity Fellowships Program. Under these criteria, each institutional applicant may apply for fellowships in up to six academic or professional areas of study, provided, among other criteria, that the choice of the area of study is justified by providing evidence of underrepresentation and evidence of national need.

The Secretary makes only one-year grant awards. Subject to conditions in the regulations and the appropriation of funds, any continuation support needed for students to complete degree programs will be provided in subsequent years.

The Department of Education is not bound to a specific number of grants or to the amount of any grant unless specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by Oct. 21, 1983, and may be obtained by writing the Graduate Programs Branch, Department of Education, (Room 3044, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applicants must be prepared and submitted in accordance with the regulations, instructions, forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of a Graduate and Professional Opportunity Fellowships application not exceed 40 pages in length.

Applicable Regulations: Regulations applicable to these programs include the following:

(1) Regulations governing the Graduate and Professional Opportunity Fellowships Program (34 CFR Part 649).

(2) Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, and 78.

Further Information: For further information contact Dr. Louis J. Venuto, Office of Postsecondary Education, U.S. Department of Education (Room 3044, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2347.

(20 U.S.C. 1134d–1134g)

(Catalog of Federal Domestic Assistance No. 84.094, Graduate and Professional Opportunity Fellowships Program)

Dated: October 7, 1983.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 83-27830 Filed 10-12-83; 8:45 am]

BILLING CODE 4000-01-M

National Resource Centers Program and Foreign Language and Area Studies Fellowships Program; Application Notice for Non-Competing Continuation Awards for Fiscal Year 1984

Applications are invited for non-competing continuation awards under the National Resource Centers and Foreign Language and Area Studies Fellowships Programs. Applications are for the second year of a 2-year funding period established by last year's competition.

Authorizing Legislation: Authority for these programs is contained in Title VI, Section 602, of the Higher Education Act of 1965, as amended (20 U.S.C. 1122).

The National Resource Centers Program provides general assistance for nationally recognized centers of excellence in modern foreign languages and area studies and in modern foreign languages and international studies.

The Foreign Language and Area Studies Fellowships Program provides fellowships to meritorious students undergoing advanced training in modern foreign languages and related area studies. The fellowships are awarded through approved institutions of higher education with nationally recognized programs of excellence.

Program Information: For non-competing continuation awards, the selection criteria are contained in Part 75.253 of the Education Department General Administration Regulations, EDGAR, 34 CFR 75.253.

Closing Date for Transmittal of Applications: An application for a non-competing continuation grant, to be assured of consideration for funding, should be mailed or hand-delivered by December 5, 1983.

If the application is late, the Department of Education may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.015 (National Resource Centers and Foreign Language and Area Studies Fellowships Programs), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Serivce postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application which is hand-delivered should be taken to the U.S. Department of Education Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

Available Funds: A Continuing Resolution enacted by the Congress on September 30, 1983, effective through November 10, 1983, authorizes the funding level of $10,600,000 for the National Resource Center Program and $6,000,000 for Foreign Language and Area Studies Fellowships for Fiscal Year 1984. This would assure continued funding of existing grants at approximately last year's levels.

Application Forms: Application forms and program information packages are expected to be ready for mailing by October 14, 1983. They may be obtained by writing to the Division of Advanced Training and Research, Centers and Fellowships Branch, International Education Programs, U.S. Department of Education (Room 3923, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. The Secretary suggests that the narrative portion of the application not exceed 30 pages. The Secretay further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the National Resource Centers and Foreign Language and Area Studies Fellowships Programs, 34 CFR Parts 655, 656, 757; and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

Further Information: For further information, contact Mr. Joseph F. Belmonte, Centers and Fellowships Branch, Internatioanl Education Programs, U.S. Department of Education (Room 3923, Regional Office Building 3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-2356 (20 U.S.C. 1122).

(Catalog of Federal Domestic Assistance No. 84.015—National Resource Centers and Foreign Language and Area Studies Fellowships Programs)

Dated: October 6, 1983.

[FR Doc. 83-27829 Filed 10-12-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-314]

Aluminum Company of America; Application for Certification of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following application for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding this application is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

83-CERT-314.

Applicant: Aluminum Company of America, Pittsburgh, Pa.

Date Filed: September 22, 1983.

Facility: Lancaster, Pa.

Gas Volume: 100,320 Mcf per year.

Oil Displaced: 16,230 barrels of No. 6 fuel oil (2.8% sulfur).

Facility: Lebanon, Pa.

Gas Volume: 99,000 Mcf per year

Oil Displaced: 16,170 barrels No. 6 fuel oil (2.8% sulfur)

Sellers: Dave Baird Investments, Inc., Belmont, Mass., Robert W. Orr, Jr., Zanesville, Ohio; British American Petroleum, Ft. Lee, N.J.; Fox Oil and Gas, McMurray, Pa.; Phillips Petroleum Co., Butler, Pa.

Transporter: Columbia Gas Transmission Corp., Charleston, W. Va.; UGI Corp. (Gas Utility Div.), Reading, Pa.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of the above application may be requested by any interested person in writing within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on October 5, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-27854 Filed 10-12-83; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the **Federal Register** on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval since Thursday, October 13, 1983. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Thursday, September 22, 1983.

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., NW., Washington, DC 20585, (202) 252-2308

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7340

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer; as shown in "For Further Information Contact." If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., October 5, 1983.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form number	Form title	Type of request	Response frequency	Response Obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
RE-616 and ER-617	Surveys of Enrollments and Degrees in Nuclear-Related Disciplines.	Extension	Annual	Voluntary	Colleges and Universities.	150	75	Forms ER-616 and ER-617 track the number of enrollments and degrees in health physics/radiation protection and nuclear engineering. The information is used in reports by the Office of Energy Research.

[FR Doc. 83-27782 Filed 10-12-83; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: November 3-4, 1983 from 9 a.m. to 4 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 8E-089, Washington, DC 20585.

Contact: Joan Snodderly, U.S. Department of Energy, Office of Energy Research (ER-6) 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252-8933.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: Briefing and discussions of:

- Consideration of ERAB Materials R&D Panel report.
- Consideration of report of Technical Panel on Magnetic Fusion.
- DOE and NRC initial response to LWR report.
- Discussion of National Energy Policy Plan.
- Public comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Joan Snodderly at the address or telephone number listed above. Requests must be receive five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Board is empowererd to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 7, 1983.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 83-27853 Filed 10-12-83; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI83-452-000]

Castle Gas Company, Inc.; Application

October 7, 1983.

Take notice that on September 30, 1983, Castle Gas Company, Inc. ("Applicant"), 3829 Willow Avenue, Pittsburgh, Pennsylvania 15234, filed an application, pursuant to Section 7(b) of the Natural Gas Act and Section 157.30 of the Regulations thereunder, for limited-term authorization to abandon sales for resale in interstate commerce to Columbia Gas Transmission Corporation ("Columbia"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 19, 1983, file with the Federal Energy Regulator Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules 211 and 214 (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules, a hearing will be held without further notice before the Commission on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of abandonment authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed which requires a formal hearing, or if the Commission on its own motion believes a formal hearing is required, further notice of such hearing will be given.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27835 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-2-000]

Colorado Interstate Gas Co.; Filing of Tariff Sheets

October 7, 1983.

Take notice that on October 3, 1983, Colorado Interstate Gas Company (CIG) tendered for filing Original Sheet Nos. 33A and 33B of its FERC Gas Tariff, Original Volume No. 1. Original Sheet Nos. 33A and 33B establish a new rate schedule for the Additional Incentive Charge (Rate Schedule AIC-1). The aforementioned rate schedule is requested to be effective September 29, 1983, pursuant to Commission Order Nos. 319 and 234-B pertaining to Docket Nos. RM81-29 and RM81-19 issued by the Commission on July 20, 1983.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27836 Filed 10-2-83; 8:45 am]

BILLING CODE 6717-01-M

Consolidated Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

[Docket Nos. TA83-2-22-003 (PGA83-2) (IPR83-2) and (AP83-2)]

October 7, 1983.

Take notice that Consolidated Gas Suppply Corporation (Consolidated) on September 30, 1983, filed a substitute tariff sheet pursuant to the Commission's August 31, 1983, suspension order in this proceeding and to make effective a voluntary reduction of 1.5¢ per Dt to reflect the prospective elimination of Order No. 93 costs from rates. The revisions reflected on Substitute Thirty-Fourth Revised Sheet No. 16 represent adjustments to Consolidated's semi-annual PGA and would become effective September 1, 1983.

Consolidated's substitute tariff sheet reflects recent modifications to pipeline supplier rates as required by Ordering Paragraph (E) of the August 31st order and the elimination of costs associated with certain Section 108 wells (for which applications for well determination filings were not timely filed) as required by Ordering Paragraph (F). Consolidated indicates it has filed for rehearing on this latter issue and eliminates such costs subject to its right to rehearing and appeal.

Consolidated also has voluntarily eliminated prospective costs associated with Order No. 93 from its rates in recognition of the recent U.S. Court of Appeal's decision vacating Order No. 93. This adjustment is also made subject to the right to collect a surcharge should the D.C. Circuit order be modified or reversed.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protest should be filed on or before October 21, 1983. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 83-27837 Filed 10-2-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-139-000]

El Paso Natural Gas Co.; Tariff Filing

October 7, 1983.

Take notice that on September 30, 1983, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act,

the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighth Revised Sheet No. 27–C
Fifth Revised Sheet No. 27–D
Second Revised Sheet No. 27–D.1
First Revised Sheet No. 27–D.2
Original Sheet No. 27–D.3

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted be become effective, will amend its Rate Schedule G, which Rate Schedule is available to Southern California Gas Company ("SoCal") and Pacific Gas and Electric Company ("PGandE") for the purchase of gas from El Paso at the California border, to effect substitution of a minimum monthly bill for the annual minimum bill presently in effect under said Rate Schedule.

The currently effective minimum bill under Rate Schedule G obligates SoCal and PGnandE to take, or failing to take to nonetheless pay for, during each calender year, a minimum annual quantity equal to 91% of a Buyer's Maximum Contracted Daily Demand ("MCDD") then in effect under their Service Agreement with El Paso, multiplied by the number of days in the year. Provision is made for reduction of the annual minimum bill obligation in the event of El Paso's failure to deliver 100% of the MCDD when such delivery level is requested by Buyer, and Buyer may make up any deficiency quantities paid for but not taken during the five calender years succeeding the year in which such deficiency occurred.

El Paso is proposing to revise said provision to establish a minimum monthly bill based on 75% of the dekatherm equivalent of El Paso's total certificated service obligation to SoCal and PGandE of 1,750 MMcf/d and 1,140 MMcf/d, respectively, calculated using the fixed cost component of the Commodity Charge rate in effect under Rate Schedule G. Provision is made for reduction of the minimum monthly purchase requirement in the event of El Paso's failure to deliver requested volumes and for return to the California customers, by credit to their bills, of any monthly deficiency payments made by such customers during any calendar year in which the aggregate of El Paso's sales to such customers during such year exceeds 75% of the sum of the annual equivalent of El Paso's total daily service obligations to the customers or when El Paso, through the operation of the minimum bill provision, would otherwise overrecover its fixed costs.

El Paso requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary to permit the tendered tariff sheets to become effective thirty (30) days following the date of filing. In the event the Commission deems it necessary to suspend the effectiveness of the tendered tariff sheets, El Paso requests that such suspension be limited to one (1) day, or alternatively to a period such that the tendered tariff sheets may be made effective on or before December 17, 1983 (the scheduled effective date of El Paso's prior filing at Docket No. RP83–100–000 to revise the minimum bill provisions of Rate Schedule G before said filing was subsequently rejected by the Commission).

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before October 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are file with the Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27839 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82–689–000]

Gulf Power; Refund Report

October 7, 1983.

Take notice that on September 22, 1983, Gulf Power ("GP") submitted for filing its Refund Report pursuant to a July 8, 1983 Commission Order Approving Settlement. GP states that the revenues collected from the wholesale customers for service rendered on or after March 1, 1983, are the same as those revenues that would be collected under the approved settlement rates effective on March 1, 1983, because the rates are the same.

GP further states that no refund compliance report was required by the Commission's final order, but GP confirms its compliance upon Staff request.

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 October 14, 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. 83-27841 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83–140–000]

Michigan Wisconsin Pipe Line Co.; Tariff Filing

October 7, 1983.

Take notice that on September 30, 1983, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing Seventh Revised Sheet No. 667 and Alternate Second Revised Sheet No. 666, Alternative Seventh Revised Sheet No. 667, and Alternate Original Sheet No. 667A, under Rate Schedule X–64 of First Revised Volume No. 2 of its FERC Gas Tariff, to become effective November 1, 1983.

Michigan Wisconsin states that this filing has been made to reflect the redetermination of the monthly charge to the High Island Offshore System (HIOS) for services rendered by Michigan Wisconsin in accordance with a service agreement between Michigan Wisconsin and HIOS dated August 4, 1977, and authorized by Commission Order issued July 6, 1978, at Docket No. CP78–134.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27842 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-1-000]

Michigan Wisconsin Pipe Line Co.; Tariff Filing

October 7, 1983.

Take notice that on October 3, 1983, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing to the Federal Energy Regulatory Commission (Commission) Original Sheet Nos. 19g, 19h and 19i which comprise Rate Schedule EUT-1 to Original Volume No. 1 of its FERC Gas Tariff.

Rate Schedule EUT-1 sets forth the terms pursuant to which Michigan Wisconsin will perform transportation pursuant to § 157.209 of the Commission's Regulations, under transportation agreements with end users which provide for rates which do not include an "Added Incentive Charge" as authorized by § 175.209(f) of the Commission's Regulations.

Michigan Wisconsin has requested that Rate Schedule EUT-1 be accepted for filing and become effective on August 5, 1983, pursuant to Commission Order Nos. 234-B and 319, pertaining to Docket Nos. RM81-19 and RM81-29, respectively, which became effective on August 5, 1983.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or beofre October 21, 1983. 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. 83-27843 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-49-000]

Montana-Dakota Utilities Co., Purchased Gas Cost Adjustment Filing

October 7, 1983.

Take notice that on September 30, 1983, Montana-Dakota Utilities Company (MDU) tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 4

Twenty-seventh Revised Sheet No. 3A
Second Revised Sheet No. 3B

First Revised Volume No. 2

Nineteenth Revised Sheet No. 10
Second Revised Sheet No. 10A

The proposed effective date of NDU's Pga filing is November 1, 1983.

MDU states that this tariff filing is being made pursuant to the Purchased Gas Adjustment Provisions of its FERC Gas Tariff. The proposed changes included a gas cost adjustment of 102.142 cents per Mcf for Rate Schedules G-1, PR-1, I-1 and X-1. In addition, MDU proposes a surcharge adjustment of 56.176 cents per Mcf applicable to Rate Schedules G-1, PR-1, and I-1.

Rate Schedule X-4 shows a gas cost adjustment of 105.540 cents per Mcf and a surcharge adjustment of 60.192 cents per Mcf. The proposed changes are supported by exhibits attached to the filing.

In addition, MDU states that Nineteenth Revised Sheet No. 10 reflects a gas cost adjustment for the sales under Rate Schedule X-5 of 53.843 cents per Mcf.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27844 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP73-63-001]

Joint Petition; Natural Gas Pipeline Company of America and Napeco, Inc., Waiver of Condition

October 7, 1983.

Take notice that on September 23, 1983, Natural Gas Pipeline of America (Natural) and NAPECO, Inc. (NAPECO), pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, petitioned the Commission for a waiver of the condition imposed by the Federal Power Commission in the above-captioned docket in Ordering Paragraph (F)(10) of the *Order Adopting Settlement Proposal, Authorizing Sale of Gas at Applicable Area Rate, Authorizing Amendment of Purchased Gas Adjustment Clause and Terminating Proceedings* issued August 3, 1973 (hereinafter called "the 1973 Order"), redesignated Ordering Paragraph (F)(12) in the *Order Amending Order* issued August 2, 1974 (hereinafter called "the 1974 Order"). This condition requires that all natural gas reserves discovered or acquired as a result of activities financed under the revolving exploration fund authorized in the above-captioned proceeding shall be dedicated to service for Natural's customers and taken into Natural's system by the most feasible means.

The petitioners state that the order issued August 3, 1973 in the above-captioned docket, authorized Natural to: (1) Price its presently-owned natural gas production attributable to leases acquired by Natural prior to October 7, 1969, at the applicable area rate; (2) establish a revolving exploration and development fund comprised of the additional monies provided by the repricing of such production, plus the net income after taxes from all revenues received from natural gas and oil produced from reserves discovered or acquired as a result of activities financed with monies from the revolving exploration fund; and (3) modify applicable provisions of its FPC Gas Tariff Purchased Gas Adjustment Clause to reflect the granted authority.

On March 4, 1974, Natural filed a petition in the above-captioned docket seeking amendment of the authorization issued in the 1973 Order (1) to permit Natural to transfer to NAPECO, a wholly-owned subsidiary company, all additional revenues derived from the repricing of gas from Natural's producing properties as authorized in the 1973 order; (2) to permit NAPECO to employ funds from the revolving fund to conduct the exploration and development program; and (3) to require NAPECO to sell any gas found to Natural for use by Natural's customers. The requested amendments to the authorization issued in the 1973 Order were granted in the 1974 Order.

Ordering Paragraph (F)(10) of the 1973 Order, redesignated Paragraph (F)(12) in the 1974 Order, requires that "all natural gas reserves discovered or acquired as a result of the exploration activities financed under the revolving exploration fund shall be dedicated to service for Natural's customers, and taken into Natural's system by the most feasible

means" (hereinafter called "customer dedication condition"). However, on May 31, 1978, Natural petitioned the Commission for a declaratory order that it was not required to connect certain marginally commercial wells which had been developed with monies from the revolving fund. By order dated November 24, 1978, in the above-referenced proceeding, the Commission granted that petition.

Natural and NAPECO state that they have recently become aware of a new situation involving marginally commercial reserves discovered through the expenditure of revolving fund monies in Lavaca County, Texas. In March, 1983, NAPECO participated in the drilling of the Natomas No. 1 Allen Well, and owns a 19 percent working interest therein. NAPECO's share of the proven reserves attributable to the Natomas No. 1 Allen Well is 262.6 MMcf, and the estimated daily deliverability attributable to NAPECO's share is 74.1 Mcf. The Natomas No. 1 Allen Well is 16 miles from Natural's nearest facilities, and 1.9 miles from the nearest facilities of any interstate pipeline. Therefore, Natural and NAPECO request that the Commission issue an order waiving the customer dedication condition of the 1973 and 1974 Orders in the above-referenced proceeding with respect to the Natomas No. 1 Allen Well.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 20, 1983. 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. 83-27845 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-7-000]

Pacific Gas & Electric Co.; Termination

October 7, 1983.

Take notice that on October 3, 1983, Pacific Gas & Electric Company ("PG&E") submitted for filing a Notice of Termination.

PG&E states that a notice is hereby given that effective as of the date the Commission accepts and permits to become effective that certain contract entitled "Interconnection Agreement Between Pacific Gas and Electric Company and the City of Santa Clara", dated as of September 30, 1983, Rate Schedule R-1, effective as of January 1, 1983, and filed with the Federal Energy Regulatory Commission by Pacific Gas and Electric Company is to be cancelled with regard to the City of Santa Clara, California. However, Rate Schedule R-1 shall remain in effect with regard to the City of Redding, California.

Notice of the proposed cancellation has been served upon the City of Santa Clara.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27846 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-736-000]

Philadelphia Electric Co; Revised Filing

October 7, 1983.

Take notice that on September 27, 1983, Philadelphia Electric Company ("PEC") submitted for filing a Transmission Enhancement Facilities Agreement ("Agreement") dated September 23, 1983, which supplements the Extra High Voltage Transmission System Agreement ("EHV") dated April 7, 1967.

PEC states that the parties to both Agreements have approved this filing. The parties are as follows:

Company	Rate schedule
Atlantic City Electric Company	5
Baltimore Gas and Electric Company	20
Delmarva Power & Light Company	34
Jersey Central Power & Light Company	30
Metropolitan Edison Company	36
Pennsylvania Electric Company	57
Pennsylvania Power & Light Company	48
Philadelphia Electric Company	30
Potomac Electric Power Company	26
Public Service Electric and Gas Company	42
UGI Corporation	1

PEC further states that the Transmission Enhancement Facilities Agreement provides for a sharing among the signatories of the annual carrying charges at a rate of 20% on the investment by some of the signatories in certain facilities designed to enhance the transfer capabilities of the facilities provided for under the ENV Agreement, which will enable signatories to import economic electric power from systems west of the interconnection supply system of the signatories known as the PJM Interconnection. The signatories have agreed to share such charges because the enhancement benefits will rebound to all signatories.

PEC submits that an effective date of November 7, 1983 is a condition precedent to this Agreement. Therefore, PEC asserts that if the Commission does not accept this filing and the modifications to the PJM Agreement both in their entirety to become effective on November 7, 1983, both filings are deemed withdrawn.

PEC therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before October 18, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27847 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER 82-80-000 and ER82-389-000]

Public Service Company of Oklahoma; Refund Report

October 7, 1983.

Take notice that on September 16, 1983, Public Service Company of Oklahoma ("PSCO") submitted for filing a Refund Report in compliance with the Commission's Order Adopting Proposed Settlement, which was issued on June 22, 1983.

The Refund Report contained a summary tabulation of all refunds; tabulations for each wholesale customer, by delivery point, showing the monthly billing determinants, revenues under the interim and settlement (or refund) rates, the monthly revenue refunds and the monthly interest; and the workpaper underlying the interest calculation.

PSCO states that copies of this Refund Report are being sent to each party to the proceeding and to the Oklahoma Corporation Commission.

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 October 17, 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. 83-27646 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-29-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 7, 1983.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on September 30, 1983 Twenty-Eighth Revised Sheet No. 12, Twenty-Eighth Revised Sheet No. 15 and Tenth Revised Sheet No. 16 to Second Revised Volume No. 1 and Thirty-Fourth Revised Sheet No. 121 to Original Volume No. 2 of Transco's FERC Gas Tariff. These tariff sheets, which are proposed to be effective November 1, 1983, reflect a net increase of 29.5¢ per dekatherm (dt) in the commodity or delivery charge of Transco's CD, G, OG, E, PS and S-2 rate schedules, a net increase of 29.4¢ per dt in the commodity charge under the ACQ rate schedule and a net increase of 0.1¢ per dt in the delivery charge under the X-20 rate schedule.

Transco states that the instant filing has been based upon a continuation of its pro rata purchase policy which was reflected in the last effective PGA on May 1, 1983 (Docket No. TA83-2-29-001) pursuant to the Settlement Agreement in Transco's Docket No. RP83-11. Discussions are currently being conducted in Docket No. RP83-11 looking toward an amendment to that Settlement Agreement which hopefully will lead to an amended PGA filing with a lower average cost of gas effective November 1, 1983 than reflected in the instant filing.

Transco describes the foregoing changes as follows:

A. Tracking Rate Increase Under PGA Clause

This rate change amounts to an increase of 0.9¢ per dt in the commodity or delivery charge in Transco's CD, G, OG, E, PS, S-2 and ACQ rate schedules. This incrase is comprised of: (a) a 7.0¢ per dt increase in the current gas cost adjustment and (b) a 6.1¢ per dt decrease in the Deferred Adjustment. The 6.1¢ decrease in the Deferred Adjustment represents the difference between the currently effective positive Deferred Adjustment of 14.5¢ per dt and the proposed positive deferred adjustment of 8.4¢ per dt which is required to eliminate, over the six-month period commencing November 1, 1983, the debit balance of $34,279,005 accumulated in Transco's Unrecovered Purchased Gas Cost Account (FERC Account No. 191) at August 31, 1983.

B. Tracking Rate Adjustment for Curtailment Credits

In its tracking rate filing effective May 1, 1983, Transco had reflected a negative surcharge of 0.1¢ per dt to return an estimated overrecovery of $198,896 related to demand charge credits as of April 30, 1983. The instant filing reflects an increase of 0.1¢ per dt in the commodity or delivery charge under Transco's CD, G, OG, E, PS, S-2 and X-20 rate schedules. This incrase, which serves to eliminate the aforesaid negative surcharge, is detailed in Appendix D hereof. Transco currently estimates that with the elimination of this negative surcharge there will be a small positive imbalance in this account as of October 31, 1983. Since positive surcharges and negative surcharges will never precisely result in a zero balance in the account, Transco proposes to transfer the October 31, 1983 balance in the account to a separate subaccount of Account 191 and reflect such balance along with other balances in Account No. 191 in its next PGA deferred account surcharge.

C. Industrial Sales Program (ISP) Surcharge (RP83-11 Settlement Agreement, Article II C)

In its tracking rate filing made May 1, 1983, Transco included a reduction of 20¢ per dt pursuant to the terms of the "Settlement Agreement as to Rates of Transcontinental Gas Pipe Line Corporation (Settlement Agreement)" approved by the Commission in Docket Nos. RP83-11-000 and RP83-30-000 on April 28, 1983. This 20¢ per dt reduction was effective for the period May 1, 1983 through October 31, 1983 and has been eliminated from the instant filing.

As a result of the aforesaid Settlement Agreement, Transco established a special subaccount within FERC Account 191 to account for the actual costs of gas purchased under the Industrial Sales Program for the six-month period commencing May 1, 1983. Details of additions and reductions to said special subaccount are included in Transco's filing.

Pursuant to informal agreement of parties to Docket No. RP83-11, Transco agreed to amortize the estimated balance in the ISP subaccount at October 31, 1983 over the twelve-month period commencing November 1, 1983. The surcharge from such amortization amounts to 8.5¢ per dt.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing 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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27650 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP 83-137-000]

Transcontinental Gas Pipe Line Corp. Proposed Changes in FERC Gas Tariff

October 7, 1983.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on September 30, 1983, tendered for filing certain tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed changes would increase revenues from jurisdictional sales, transportation and storage services by approximately $138 million annually based upon the 12-month period ended June 30, 1983, as adjusted. The proposed effective date of this rate change is November 1, 1983. However, since Transco has agreed, as part of the Commission-approved settlement of its rate proceeding in Docket Nos. RP83-11-000 and RP83-000 not to place increased rates into effect prior to April 1, 1984, Transco anticipates that the Commission will suspend this filing for the full five month period provided in Section 4(c) of the Natural Gas Act.

Transco states that the principal causes of the rate increase are (1) increases in operating and maintenance expenses; (2) an increase in rate base due primarily to increased take or pay payments reflected during the test period ending March 31, 1984; (3) an increase in the overall rate of return and related income taxes; and (4) a reduction in projected sales due to competitive factors.

In addition, *pro forma* tariff sheets were filed which would permit Transco to reflect in its GSS and S-2 storage rates any changes in the GSS rate of Consolidated Gas Supply Corporation or the X-28 rate of Texas Eastern Transmission Corporation, respectively.

Transco has also included revised sheets to its Rate Schedule T transportation tariff (to be denominated Rate Schedule T-1). In addition to an increase in transportation rates, Transco is proposing to establish separate rate levels for (a) service within the customer's firm sales level, and (b) service in excess of such firm sales level. A new Rate Schedule T-11 covering transportation service for customers not qualifying for service under Rate Schedule T-1 is also included in this filing. The company states that such new rates schedule is being proposed primarily to accord with the provisions of Order No. 319, issued July 20, 1983 in Docket No. RM81-29-000.

Copies of the filing were served upon the Company's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 2.14 and Rule 2.11 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27849 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-50-000]

Valley Gas Transmission, Inc.; Purchased Gas Cost Adjustment Filing

October 7, 1983.

Take notice that on September 29, 1983, Valley Gas Transmission, Inc. (Valley) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, its proposed "Twenty-sixth revised Sheet No. 2A". The proposed effective date is November 1, 1983.

Valley states that this tariff sheet is filed pursuant to its currently effective Purchased Gas Cost Adjustment Provision. The proposed changes involve Valley's "Current Surcharge Adjustment" and "Current Gas Cost Adjustment". The adjustments are supported by computations attached to the filing.

Any person desiring to be heard or to protest said filing 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 (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 21, 1983. 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. 83-27851 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-32-000]

Vermont Electric Cooperative, Inc. v. State of Vermont Public Service Board and Vermont Department of Public Service; Complaint and Petition for Declaratory Order

October 7, 1983.

Take notice that on September 23, 1983, Vermont Electric Cooperative, Inc. ("VEC") submitted for filing its Complaint and Petition for Declaratory Order against the State of Vermont Public Service Board ("Public Service Board") and the Vermont Department of Public Service ("Department") pursuant to 18 CFR 385.206 and 385.207.

VEC submits that the Public Service Board has violated section 210 of the PURPA regulation, 16 U.S.C. 824a-3, and has acted contrary to the FERC rules implementing section 210 by establishing by rule a procedure that will determine rates without regard to VEC's avoided cost. Also, the Public Service Board has incorporated, as a floor, a rate of 7.8 cents/Kwh, which is higher than VEC's full avoided cost. VEC further submits that the Department has required that VEC purchase power from the Department.

Therefore, VEC requests that the Commission issue a declaratory order that the actions of Public Service Board are contrary to PURPA regulations section 210.

VEC requests that the Commission:

(a) Order the Public Service Board and the Department of Public Services to answer in writing this complaint within a reasonable time to be specified by the Commission.

(b) Issue a declaratory order stating that PURPA and the FERC rules do not permit average or composite state-wide rates and do not require any individual utility to pay more than its full avoided cost.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 7, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-27852 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-388-000]

Electodyne Research Corp., Claymont, Delaware; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 7, 1983.

On August 22, 1983, Electrodyne Research Corporation (Applicant), of 1617 Sweetbriar Road, Gladwyne, Pennsylvania 19035, filed with the 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 Claymont, New Castle County, Delaware. The primary energy source for the facility will be anthracite coal culms. The useful thermal output, which is in the form of process steam, will be sold to industrial facilities producing sulfuric acid, petrochemicals, and refined gasses. The facility will be expansible to meet future increases in thermal output demand. The electric power production capacity of the facility will be 56,339 kilowatts.

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, 824 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. 83-27840 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-430-000]

Energy Co-Gen, Inc., Fort Morgan, Colorado; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 7, 1983.

On September 19, 1983, Energy Co-Gen, Inc. (Applicant) of 2908 Kittredge Park Road, Evergreen, Colorado 80439, filed with the 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 at the Sterling Colorado Beef Company in Fort Morgan, Colorado. The primary energy source for the facility will be natural gas. The electric power production capacity of the facility will be 2600 kilowatts.

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. 83-27840 Filed 10-12-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51484; TSH-FRL 2434-3]

Certain Chemicals; Premanufacture Notices

Correction

In the issue of Thursday, October 6, 1983, on page 45596 in the third column, a correction to FR Doc. 83-25153 appeared. The second correction was inaccurate and should have appeared as follows:

* * * * *

2. On page 45596, in the third column, in the last line of the paragraph, "227-272" should read "227, 272".

[BILLING CODE 1505-01-M

[OPTS-51465C; BH-FRL 2451-1]

Alkyl-Substituted Aromatic Amine; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) PMN 83-663, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on January 4, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-216, 401 M st., SW., Washington, D.C. 20460, (202-382-3746).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a EMN to RPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On April 22, 1983, EPA received PMN 83-663 for alkyl-substituted aromatic amine. The PMN substance will be imported for use as a chain extender for polyurethanes. The submitter of the PMN claimed its identity, chemical identity, and the import volume to be confidential business information. Notice of receipt of the PMN was published in the **Federal Register** of May 6, 1983 (48 FR 20490). The original 90-day review period, including a voluntary suspension by the submitter, is scheduled to expire on October 6, 1983.

EPA's detailed analysis of the substance described in the PMN addressed the following: Effects on human health, human exposure, environmental release, ecological effects, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Exposure to the PMN substance may result in adverse health effects, among which may be carcinogenicity.

2. During processing and use of the PMN substance, the potential exists for significant worker exposure.

Based on this analysis, EPA finds that there is a possibility that the substance submitted for review in PMN 83-663 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to further investigate potential health effects and use conditions, to examine its regulatory options and to prepare the necessary documents, should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to January 4, 1984.

PMN 83-663 is available for public inspection in Rm. E-107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Dated: August 10, 1983.

Marcia E. Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 83-27782 Filed 10-12-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 30, 1983.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on any of these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Part or section number	Title
Part 22 (Sections 22.201, 22.203, 22.204, 22.207, 22.208, 22.300, 22.307, 22.406, and 22.512).	Public Mobile Radio Services.
Part 63 (Sections 63.01-63.63, 63.65, 63.66, 63.71-63.601).	Section 214 Application and Supplemental Information Requirements for Domestic Facilities.
Section 64.804	Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.
Section 73.045	AM Antenna Systems.
Section 73.061	AM Directional Antenna Field Measurements.
Section 73.066	Remote Control Authorizations.
Section 73.099	Presunrise Service Authorizations (PSA).
Section 73.157	Special Antenna Test Authorizations.
Section 73.158	Directional Antenna Monitoring Points.
Section 73.274	Remote Control Authorizations.
Section 73.295	Use of Multiplex Subcarriers.
Section 73.546	Automatic Transmission System Monitoring and Alarm Points.
Section 73.574	Remote Control Authorizations.
Section 73.642	Subscription TV Licensing Policies.
Section 73.677	TV Remote Control Authorizations.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-27754 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-820702AK: MM Docket No. 83-1030 etc.]

Applications for Consolidated Hearing; Baldwin Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Baldwin Broadcasting, Inc.	Martin, Ky	BPH-820702AK	83-1030
B. Floyd County Broadcasting Co, Inc.	Allen, Ky	BPH-820906AR	83-1031

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b), A, B
2. Contingent Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-27743 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPH-811001AH: MM Docket No. 83-1017 etc.]

Applications for Consolidated Hearing; Eagle Rock Broadcasting Company, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Eagle Rock Broadcasting Company, Inc.	Idaho Falls, Id	BPH-811001AH	83-1017
B. The First One Broadcast Group	Idaho Falls, Id	BPH-811110OAH	83-1018
C. Pamela Ericson	Idaho Falls, Id	BPH-820521AM	83-1019
D. Celestino Montoya	Idaho Falls, Id	BPH-820524AG	83-1020

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and applicant(s)

1. (See Appendix) B, C
2. Air Hazard B
3. Comparative A, B, C, D
4. Ultimate A, B, C, D

3. If there is any non-standardized issue(s) in the proceeding, the full text of this issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Issue(s)

To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: B (First One), C (Ericson)

[FR Doc. 83-27749 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Marcells' Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Marcell's Inc	Augusta, Georgia	BPH-811104AM	83-1025
B. Wavelengths, Inc	do	BPH-820122AS	83-1026
C. Clarence Everett Jones, d/b as Santee-Cooper Broadcasting Co., Augusta, Ga.	do	BPH-820622AE	83-1027
D. Jack A. Carpenter and D. Anne Carpenter, d/b as Carpenter Broadcasting Co.	do	BPH-820624BP	83-1028
E. Wafar Communications, Inc	Clearwater, S.C	BPH-820624BU	83-1029

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Main Studio, A.
2. (See Appendix), A, B.
3. Air Hazard, C.
4. 307(b), All Applicants.
5. Contingent Comparative, All Applicants.
6. Ultimate, All Applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant,

Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

2. To determine with request to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8*, the applicant(s) is financially qualified: A (Marcell), B (Wavelength).

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s) and Deficiency

A (Marcell): Applicant requires $111,500 for the first 3 months operation and construction costs. It has not submitted any documentation that this amount is available.

B (Wavelength): Applicant requires $244,318 for the first 3 months operation and construction costs. It has not submitted any documentation that this amount is available.

[FR Doc. 83-27745 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

* Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s) and Deficiency

B (First One), Applicant requires $114,000 for the first 3 months operation and construction costs. It has not submitted any documentation that this amount is available.

C (Ericson), Applicant requires $104,911 for the first 3 months operation and construction costs. She has not submitted any documentation that this amount is available.

Applications for Consolidated Hearing; San Luis Valley Broadcasting, Inc. and DBL Broadcasting Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. San Luis Valley Broadcasting, Inc.	Monte Vista, Colorado	820602AL	83-1032
B. DLB Broadcasting Corp.	do	821021AR	83-1033

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B.
2. Comparative, A, B.
3. Ultimate, A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554, Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-27744 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-1010, File No. BPIH-82 1129AH, et al.]

Phoenix Media Corp. et al.; Memorandum Opinion and Order

In re applications of Phoenix Media Corp., MM Docket No. 83-1010, File No. BPIH-821129AH; Barnes, London, & Lockhart d/b/a/ Long Island Radio, MM Docket No. 83-1011, File No. BPIH-830223AA; Island Sound Communications, MM Docket No. 83-1012, File No. BPIH-830223AB; and Nassau Broadcasting, Inc., MM Docket No. 83-1013, File No. BPIH-830223AF; for interim authority to operate the facilities of former station WLIR(FM) Garden City, New York (92.7 MHz, Channel 224, 1 kW at 521 feet).

Adopted: September 21, 1983.
Released: October 4, 1983.

By the Commission.

1. The Commission, by the Chief, Mass Media Bureau acting under delegated authority, has before it for consideration the above-captioned mutually exclusive applications for interim operating authority.

2. In June of 1981, the Commission denied the license renewal application for Station WLIR(FM), Garden City, New York, *Stereo Broadcasting, Inc.*, 87 FCC 2d 87 (1981). *Reconsideration denied*, 50, RR 2d 1346 (1982). On December 23, 1982, Stereo Broadcasters dismissed its appeal of the Commission's decision. On January 13, 1983, the Commission released a Public Notice (Mimeo #1775) inviting applications for the frequency. Although no restrictions were placed on the filing of proposals for operation of the frequency on a regularly licensed basis, we did state our intention to reject as unacceptable for filing any application for interim authority containing parties who would have any interest in filing for regular use of the frequency. Consequently, the above applicants are independent of any potential regular licensee of the facilities.

3. Applicants are required by §73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that Nassau Broadcasting, Inc. published the required notice. To remedy this deficiency, Nassau Broadcasting must publish local notice of the application, if it has not already done so, and so inform the Review Board within 20 days of the release of this Order, or an appropriate issue will be specified by the Board.

4. We find that the above applicants for interim authority are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they are being designated in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursant to Sections 5(d) and 309(e) of the Communications Act of 1934, as amended, the above applications are designated for oral argument before the Review Board at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine which of the above applications would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It is further ordered, That within 20 days of the release of this order, Nassau Broadcasting, Inc. shall inform the Review Board as to whether local notice of filing of the application has been published.

7. It is further ordered, That the applicants SHALL SUBMIT their respective showings under the comparative issue within twenty days of the release of this Order.

8. It is further ordered, That the interim operator authorized shall compute it net profits by the accounting methods used for Federal income tax purposes and shall pay over to recognized local charities those net profits. Distributions shall be made at intervals not exceeding every three months and shall be in an amount not less than 80% of the accumulated net profits so computed.

9. It if further ordered, That the interm operator authorized shall, six months after the commencement of operation, file with the Commission an accounting of its revenues, expenses and net profits, if any, and the distribution of such net profits, and shall continue to submit such accounts thereafter at intervals of not more than every six months, during the term of the interim operation. The accounting should be submitted to the Chief, Audio Services Division.

10. It if futher ordered, That to avail themselves of the opportuinty to be heard, the applicants shall within ten days of the release of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the oral argument and present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, purusant of Section 311(a)(2) of the Communications Act of 1934, as amended, forthwith upon release of the Order fixing the time and date of the oral argument, cause to be published in a newspaper of general

circulation in Garden City, New Jersey, a notice of the hearing, either individually or jointly, in the manner prescribed by § 73.3594 of the Commissions Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-27756 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Special Deliverys Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Special Deliverys, Inc.	Winamac, Indiana	BPH-820526AL	83-1014
B. Thomas Arnett	do.	BPH-821021AN	83-1015
C. Northstar Communications, Inc.	do.	BPH-821021AO	83-1016

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A
2. Comparative A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-27748 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Expense Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee scheduled to meet on November 1 and 2, 1983. The meeting will begin at 9:00 a.m. on November 1 and wil be open to the public. The meeting location is: AT&T Conference Room A (10th Floor), 1120 20th Street NW, Washington, DC.

The agenda is as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman John Howes, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effectie attainment of Subcommittee objectives. Anyone not a member of a Subcommittee and wishing to make an oral presentation should contact Mr. Howes (212/393-4029) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-27751 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. 83-525]

Facilities Planning in the Caribbean Region

October 4, 1983.

Members of the Common Carrier Bureau staff will convene a meeting of interested parties to the Caribbean Planning Process in Room 330, FCC, 1200 19th Street, NW., Washington, D.C. at 10:00 a.m. on Thursday October 13, 1983.

The agenda of the meeting will include: (1) The submission of the costed alternative plans; and (2) any comments on material already submitted in the Process.

For additional information, contact Margot Bester (202) 632-4047.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-27752 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee for the 1985 ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing it (Space WARC Advisory Committee); Meeting

October 5, 1983.

Working Group D: Economic Analysis.

Chairman: Dr. Kirit Patel (212) 599-1526.

Date: Tuesday, October 18, 1983.

Time: 10:00 a.m.-1:00 p.m.

Location: Federal Communications Commission, 2025 M Street NW., Room 7317, Washington, D.C. 20554.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-27753 Filed 10-12-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Formation of Bank Holding Companies; American State Bancorporation, Inc.

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 Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American State Bancorporation, Inc.*, Kenosha, Wisconsin; to become a bank holding company by acquiring at least 80 percent of the voting shares of American State Bank, Kenosha, Wisconsin. Comments on this application must be received not later than October 26, 1983.

2. *Harvard Bancorp., Inc.*, Harvard, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Harvard State Bank, Harvard, Illinois. Comments on this application must be received not later than November 4, 1983.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Jackson Financial Corporation*, Mayfield, Kentucky; to become a bank holding company by acquiring 96 percent of the voting shares of The First National Bank of Mayfield, Mayfield, Kentucky. Comments on this application must be received not later than October 26, 1983.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Energy Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The Energy Bank, N.A., Dallas, Texas. Comments on this application must be received not later than November 2, 1983.

2. *LBT Corporation*, Shreveport, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of Louisiana Bank & Trust Company, Shreveport, Louisiana. Comments on this application must be received not later than October 26, 1983.

3. *New State Bancshares, Inc.*, Littlefield, Texas, (a subsidiary of Independent Bankshares, Inc., Abilene, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of State Bancshares, Inc., Littlefield, Texas. Comments on this application must be received not later than November 2, 1983.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *SJNB Financial Corp.*, San Jose, California; to become a bank holding company by acquiring 100 percent of the voting shares of San Jose National Bank, San Jose, California. Comments on this application must be received not later than November 4, 1983.

Board of Governors of the Federal Reserve System, October 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27739 Filed 10-12-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; First Mid-Illinois Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to acquire 100 percent of the voting shares or assetts of Mattoon Bank, Mattoon, Illinois. Comments on this application must be received not later than November 2, 1983.

Board of Governors of the Federal Reserve System, October 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27740 Filed 10-12-83; 8:45 am]

BILLING CODE 6210-01-M

Additional Extension of Comment Period; SSG, Ltd.

SSG, Ltd, Miami, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 33 percent or more of the voting shares of Southeast Banking Corporation, Miami, Florida. Notice of the application was published Wednesday, August 17, 1983 at page 37304 of the **Federal Register**. The comment period for the application originally expired September 9, 1983. A notice extending the comment period to September 30, 1983, was published in the **Federal Register** (FR Doc. 83-25283) at page 41646 of the issue for September 16, 1983. This notice is to announce an additional extension of the comment period. Comments on this application should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. no later than December 2, 1981.

Board of Governors of the Federal Reserve System, October 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27741 Filed 10-12-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Chase Manhattan Corp.

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 § 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 New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York (consumer and mortgage lending, loan servicing and insurance agency activities; Connecticut): To make or acquire, for its own account and for the account of others, loans and other extensions of credit, both secured and unsecured, including, but not limited to, consumer and business lines of credit, installment loans for personal, household and business purposes and mortgage loans secured by real property; to service loans and other extensions of credit; and to act as insurance agent for credit life insurance and credit accident and health insurance directly related to such lending and servicing activities. These activities will be conducted by a subsidiary, Chase Manhattan Financial Services, Inc., from a *de novo* office in Greenwich, Connecticut. Comments on this application must be received not later than November 4, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincoln County Bancorp., Inc.*, Troy, Missouri (sale of credit related insurance; Missouri): To engage *de novo* in acting as agent for the sale of credit life, accident and health insurance directly related to extensions of credit by Peoples Bank of Lincoln County and Winfield Banking Company, subsidiaries of Lincoln County Bancorp, Inc. These activities would be performed in the cities of Troy, Hawk Point and Winfield, Missouri and the surrounding rural areas. Comments on this application must be received not later than November 2, 1983.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California (asset-based lending and servicing activities, midwestern states): To engage, through its subsidiary, First Interstate Commercial Corporation, in making or acquiring loans and other extensions of credit, such as commercial loans secured by a borrower's inventory, accounts receivable or other assets, and servicing loans. These activities would be conducted from an office located in St. Louis, Missouri, serving the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Minnesota, Iowa, Missouri, Arkansas, Indiana, Michigan, Illinois, Wisconsin, and Texas. Comments on this application must be received not later than November 4, 1983.

Board of Governors of the Federal Reserve System, October 6, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27738 Filed 10-12-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Mellon National Corp., 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 § 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 reason 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 Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon National Corporation*, Pittsburgh, Pennsylvania (data processing activities; New York): Proposes to engage, through its subsidiary, Mellon Financial Services Corporation #1, in data processing activities, including: providing data processing and data transmission services, data bases or facilities (including data processing and data transmission hardware, software, documentation and operating personnel) for the internal operations of the holding company or its subsidiaries; and providing to others data processing and transmission services, facilities, data bases or access to such services, facilities, or data bases by any technologically feasible means in accordance with section 225.4(a)(8) of Regulation Y. These activities would be conducted from an office in New York, New York serving clients throughout the United States and overseas. Comments on this application must be received not later than October 26, 1983.

2. *Mellon National Corporation*, Pittsburgh, Pennsylvania (data processing activities; Massachusetts): Proposes to engage, through its subsidiary, Mellon Financial Services Corporation #1, in data processing activities, including: providing data processing and data transmission services, data bases or facilities (including data processing and data transmission hardware, software, documentation and operating personnel) for the internal operations of the holding company or its subsidiaries; and providing to others data processing and transmission services, facilities, data bases or access to such services, facilities, or data bases by any technologically feasible means in accordance with section 225.4(a)(8) of Regulation Y. These activities would be conducted from an office in Newton, Massachusetts, serving clients throughout the United States and overseas. Comments on this application must be received not later than October 26, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina (sale of money orders; North Carolina, Virginia): To engage through its subsidiary, TranSouth Financial Corporation, in the retail sale of money orders having a face value of

not more than $1,000. These activities will be conducted from an office in Waynesville, North Carolina and offices in the cities of Chesapeake, Grafton, Hampton, Newport News, Norfolk, Petersburg, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, in southern Virginia. The geographic areas to be served will generally be within a 25-mile radius of each office. Comments on this application must be received not later than November 2, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin (mortgage banking and servicing activities; the United States): To engage through its subsidiary, M&I Mortgage Company, Inc., Madison, Wisconsin, in originating, acquiring, selling and servicing residential and commercial mortgage loans for its own account or for the account of others, as well as making construction and development mortgage loans and performing such other incidential activities necessary to conduct a mortgage banking business. These activities would be conducted from an office in Madison, Wisconsin, serving all 50 states. Comments on this application must be received not later than October 26, 1983.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota (financing, insurance and travelers checks activities; Tennessee): To engage through its subsidiary, Norwest Financial Tennessee, Inc., in the activities of consumer finance, sales finance and commercial finance, the sale of credit life, credit accident and health and property and credit-related casualty insurance related to extensions of credit by that company (such sale of credit-related insurance being a permissible activity under Subparagraph D of Title VI of the Garn-St Germain Depository Institutions Act of 1982) and the offering for sale and selling of travelers checks. These activities will be conducted from an office in Kingsport, Tennessee. This notification is for approval to open an office at the aforementioned location, and to engage *de novo* in the aforementioned activities from said office. Said office will serve Kingsport, Tennessee, and nearby communities. Comments on this application must be received not later than October 26, 1983.

2. *Norwest Corporation*, Minneapolis, Minnesota (financing, insurance and travelers checks activities; Illinois): To engage through its subsidiary, Norwest Financial Illinois, Inc., in the activities of consumer finance, sales finance and commercial finance, the sale of credit life, credit accident and health and property and credit-related casualty insurance related to extensions of credit by that company (such sale of credit-related insurance being a permissible activity under Subparagraph D of Title VI of the Garn-St Germain Depository Institutions Act of 1982) and the offering for sale and selling of travelers checks. These activities will be conducted from an office in Lisle, Illinois. This notification is for approval to open an office at the aforementioned location, and to engage *de novo* in the aforementioned activities from said office. Said office will serve Lisle and Chicago, Illinois; and nearby suburbs of Chicago, Illinois. Comments on this application must be received not later than October 26, 1983.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon (consumer loan; credit insurance activities; California): To engage through its existing indirect subsidiary, Bancorp Credit Services, Inc., in the making, acquiring and servicing of loans and other extensions of credit, either secured or unsecured, for its own account or the account of others, incuding, but not limited to consumer loans, installment sales contracts and other forms of receivables; acting as insurance agent with regard to credit life and disability insurance, property and casualty insurance, solely in connection with extensions of credit by Bancorp Credit Services, Inc., Bancorp relies upon the provisions of Section 225.4(a)(1), 225.4(a)(3), and 225.4(a)(9)(i) of Regulation Y and Section 601(A) and 601(D) of Title VI of the Garn-St Germain Depository Institutions Act. These activities will be conducted from and office located in Sacramento, California, serving all of the incorporated City of Sacramento. Comments on this application must be received not later than November 4, 1983.

Board of Governors of the Federal Reserve System, October 5, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-27742 Filed 10-12-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Economic Analysis, Line of Business Program; Clearance of Individuals and Organizations

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of a voluntary survey of individuals and organizations who have recently expressed interest in the FTC's Line of Business Program.

SUMMARY: The Federal Trade Commission's Line of Business program has collected sales, expense, profitability, and asset data by line of business from about 450 of the nation's largest manufacturing firms. Aggregated data for 1974, 1975, and 1976 have been made available to the public in Annual Line of Business Reports, and data for 1977, which are currently being processed, should be published by the end of this year. The disaggregated data are also available to employees of the Line of Business program who may use them for research.

Before deciding whether or not to collect and publish data for years subsequent to 1977, the Commission directed its staff to conduct an analysis of the costs and benefits of the program. The Commission has also invited all interested parties to comment on the program.

Although the Commission found the public comments very helpful it intends to ask for more specific information about the use and potential uses of Line of Business data. When combined with information from other sources, the results of the survey will provide the Commission with improved information on which to base its decision concerning future data collection.

DATE: Comments on the request for OMB review must be submitted on or before November 14, 1983.

ADDRESSES: Send comments to FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 30001, Washington, D.C. 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald S. Bond, Deputy Director for Operation and Research, Bureau of Economics, Federal Trade Commission, Washington, D.C. 20580 (202) 634-7810.

By Direction of the Commission.

Dated: September 21, 1983.
Emily H. Rock,
Secretary.
[FR Doc. 83-27735 Filed 10-12-83; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Medicare Program; Monthly Actuarial Rates and Monthly Premium Rate

Correction

In FR Doc. 83-26669, beginning on page 44914, in the issue of Friday, September 30, 1983, make the following corrections:

1. On page 44916, in Table 5, in the last column on the right under "High cost projection" for the year 1985, the third line now reading "9.8" should read "8.8".

2. On page 44917, also in Table 5, in the first column headed "June 30, 1983", in the third line "$,225" should read "$2,225".

BILLING CODE 1505-01-M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Device Panel

Date, time, and place. November 17 and 18, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 17, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, November 18, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Dr. George C. Murray, National Center for Devices and Radiological Health (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendation for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before November 1 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 17, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's), and may discuss specific PMA's for IOL's. If discussion of all pertinent IOL issues is not completed, discussion will continue the following day. On November 18, the committee will discuss PMA's for contact lenses, neodymium:yitrium-aluminum-garnet (Nd:YAG) lasers, other ophthalmic devices, and general issues relating to these devices. Copies of both contact lens and Nd:YAG laser guidances will be available to persons wishing to receive them.

Closed committee deliberations. On November 17 and 18, the committee will conduct reviews of PMA's for IOL's. On November 18, the committee will conduct reviews of specific Nd:YAG laser PMA's. The committee will also discuss trade secret or commercial information relevant to PMA's for contact lens products and ND:YAG lasers. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportuntiy to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reason stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for

the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commerical or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: October 5, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-27772 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82P-0388]

General Medical Co.; Drionic® Iontophoretic Sweat Inhibition Device; Panel Recommendation on Petition for Reclassification; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that requested comment on the recommendations of the General and Plastic Surgery Device Section of the Surgical and Rehabilitation Devices Panel that the Drionic® Iontophoretic Sweat Inhibition Device not be reclassified from class III (premarket approval) into class I (general controls). This document corrects two typographical effors.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, National Center for Devices and Radiological Health (HFK-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-14544 appearing at page 24981 in the issue of Friday, June 3, 1983, the following corrections are made:

1. On page 24981, second column, under "Supplementary Information," third paragraph, first line, "October 18, 1982" is corrected to read "October 8, 1982".

2. On page 24983, second column, second full paragraph, third line, the word "arest" is corrected to read "arrest".

Dated: October 6, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-27773 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83G-0318]

Beatrice Foods Co.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 3G0287) has been filed on behalf of Beatrice Foods, proposing that use of gum acacia (arabic) in alcoholic beverages up to a maximum level of 20 percent in the finished preparation (liqueur) is generally recognized as safe (GRAS).

DATE: Comments by December 12, 1983.

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

FOR FURTHER INFORMATION CONTACT: Leo F. Mansor, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status (21 CFR 170.35), notice is given that a petition (GRASP 3G0287) has been filed on behalf of Beatrice Foods Co., c/o 135 South La Salle, Chicago, IL 60603, proposing to amend § 184.1330 *Acacia (gum arabic)* (21 CFR 184.1330) to permit the use of gum acacia (arabic) in alcoholic beverages up to a maximum level of 20 percent in the finished preparation (liqueur).

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

Interested persons may, on or before December 12, 1983, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the requested use is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 3, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-27774 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 83F-0312]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive

regulations be amended to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2, 6-di-*tert*-butylphenol as a stabilizer in rubber articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B3750) has been filed by Ciba-Geigy Corp., Three Skyline Dr. Hawthorne, NY 10532, proposing that the food additive regulations be amended to provide for the safe use of 4-[[4,6-bis(octylthio)-*s*-triazin-2-yl]amino]-2, 6-di-*tert*-butylphenol as a stabilizer in rubber articles intended for repeated use which comply with 21 CFR 177.2600.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: October 3, 1983.

Richard J. Ronk,

Acting Director, Bureau of Foods.

[FR Doc. 83-27775 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

Elanco Products Co.; Methagon™ (Flumethasone) Injection; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Elanco Products Co. providing for use of Methagon™ (flumethasone) Injection for cattle, horses, dogs, and cats for treating various rheumatic, allergic, dermatologic, and other disease states responsive to anti-inflammatory corticoids. The firm requested withdrawal of approval

EFFECTIVE DATE: October 24, 1983.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinksy, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285, is the sponsor of NADA 33–239, which provides for use of Methagon™ (flumethasone) Injection for cattle, horses, dogs, and cats for treating various rheumatic, allergic, dermatalogic, and other disease states responsive to anti-inflammatory corticoids.

The application was approved on February 3, 1966. Approval of this NADA has not been codified in the Code of Federal Regulations. By letter of June 20, 1983, the firm requested withdrawal of approval of the NADA because the product is not being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 33–239 and all supplements for Elanco's Methagon™ (flumethasone) Injection is hereby withdrawn, effective October 27, 1983.

Dated: October 6, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-27778 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Vital and Health Statistics National Committee; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–643), notice is hereby given that the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 242k), will convene on Monday, November 7, 1983, at 9:00 a.m. and on Tuesday, November 8, at 9:00 a.m. in Room 729G of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Subcommittee will hear presentations from experts bearing on several critical issues in disease classification, medical nomenclature, automated coding systems, and diagnostic related groups.

Futher information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Stewart, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone 301–436–7122.

Dated: October 4, 1983.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 83-27797 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-17-M

Vital and Health Statistics National Committee; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92–643), notice is hereby given that the Subcommittee on Uniform Minimum Health Data Sets of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k)(2) of the Public Health Service Act, as amended, (42 U.S.C. 242k), will convene on Friday, November 4, 1983, at 9:00 a.m. in Room 729G of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Subcommittee will review the experience of various users with the Uniform Hospital Discharge Data Set, explore any problems reported by users, and make recommendations regarding the items and their definitions.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Stewart, National Committee on Vital and Health Statistics, Room 2–28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone 301–436–7122.

Dated: October 4, 1983.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 83-27796 Filed 10-12-83; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I–2088]

Termination of Classification for Multiple-Use Management; Idaho

1. Pursuant to the authority delegated by BLM Manual Section 1203—Delegation of Authority (48 FR 85), I hereby terminate the Bureau of Land

Management Multiple-Use Classification Order dated June 14, 1968, and published in the Federal Register June 20, 1968, Vol. 33, No. 120, Page 9120–9121, insofar as it affected the lands described below:

Boise Meridian, Idaho

Tps. 2 N., 1 N., 1 S., 2 S., 3 S., and 4 S., R. 6 W.

T. 5 S., R. 6 W.,
Secs. 1 and 2, all;
Secs. 11 to 14, inclusive;
Secs. 23 to 25, inclusive;
Sec. 26, N½, N½SW¼, SW¼SW¼, SE¼ SE¼, N½SE¼
Sec. 35, NE¼NE¼, S½NE¼, W½, SE¼;
Sec. 36, all;

Tps. 6 S., 7 S., 8 S., 9 S., 10 S., 11 S., 12 S., 13 S., 14 S., 15 S., and 16 S., R. 6 W.

T. 2 N., R. 5 W.,
Sec. 6, lots 4, 5, 6 and 7, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 7, W½NE¼, W½, SE¼;
Sec. 8, SW¼;
Secs. 17 to 20, inclusive;
Secs. 25 to 36, inclusive.
T. 1 N., R. 5 W.,
T. 1 S., R. 5 W.,
Secs. 1 to 29, inclusive;
Sec. 30, lots 1 to 7, inclusive, S½NE¼, E½ SW¼, SE¼;
Sec. 31, all;
Sec. 32, N½, SW¼SW¼, SE¼;
Secs. 33 to 36, inclusive.

Tps. 2 S., 3 S., 4 S., 5 S., 6 S., 6 S., 7 S., 8 S., 9 S., 10 S., 11 S., 12 S., 13 S., 14 S., 15 S., and 16 S., R. 5 W.

T. 2 N., R. 4 W.,
Secs. 28 to 33, inclusive.
T. 1 N., R. 4 W.
Secs. 4 to 10, inclusive;
Sec. 14, S½N½, S½;
Secs. 15 to 36, inclusive.

Tps. 1 S., 2 S., 3 S., 4 S., 5 S., 6 S., 7 S., 8 S., 9 S., 10 S., 11 S., 12 S., 13 S., 14 S., 15 S., and 16 S., R. 4 W.

T. 1 S., R. 3 W.,
Sec. 5, lots 3 and 4, S½NW¼, SW¼;
Secs. 6 and 7, inclusive;
Sec. 8, W½;
Sec. 17, W½;
Secs. 18 to 22, inclusive;
Secs. 27 to 36, inclusive.

Tps. 2 S., 3 S., 4 S., 5 S., 6 S., 7 S., and 8 S., R. 3 W.

T. 9 S., R. 3 W.,
Secs. 1 to 12, inclusive;
Secs. 15 to 22, inclusive;
Secs. 27 to 34, inclusive.
T. 10 S., R. 3 W.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.
T. 11 S., R. 3 W.,
Secs. 5 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 27 to 34, inclusive.
T. 12 S., R. 3 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 23, inclusive;
Secs. 26 to 35, inclusive.
T. 13 S., R. 3 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 to 36, inclusive.

Tps. 14 S., 15 S., and 16 S., R. 3 W.

T. 1 S., R. 2 W.,
Sec. 31, all.
T. 2 S., R. 2 W.,
Secs. 6 and 7, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 31, inclusive;
Sec. 32, W½.
T. 3 S., R. 2 W.,
Sec. 5, lots 3 and 4, S½NW¼, SW¼;
Secs. 6 to 9, inclusive;
Secs. 16 to 22, inclusive;
Secs. 27 to 34, inclusive.

Tps. 4 S., 5 S., 6 S., 7 S., and 8 S., R. 2 W.

T. 9 S., R. 2 W.,
Secs. 1 to 12, inclusive.
T. 14 S., R. 2 W.,
Secs. 6 to 8, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 to 36, inclusive.

Tps. 15 S., and 16 S., R. 2 W.

T. 4 S., R. 1 W.,
Secs. 27 to 34, inclusive;
Sec. 35, S½.
T. 5 S., R. 1 W.,
Secs. 2 to 36, inclusive.
T. 6 S., R. 1 W.,
Secs. 2 to 10, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.
T. 7 S., R. 1 W.,
Secs. 4 to 8, inclusive;
Secs. 17 and 18, inclusive.
T. 15 S., R. 1 W.,
Secs. 14 to 23, inclusive;
Secs. 25 to 36, inclusive.
T. 16 S., R. 1 W.,
T. 5 S., R. 1 E.,
Sec. 7, all;
Sec. 8, W½;
Secs. 17 to 19, inclusive;
Sec. 30, all.
T. 16 S., R. 1 E.,
Sec. 6, lots 6 to 20, inclusive, SE¼NW¼, E½SW¼;
Sec. 7, lots 5 to 16, inclusive, E½W½;
Sec. 18, lots 5 to 16, inclusive, E½W½;
Sec. 19, lots 5 to 16, inclusive, E½W½;
Sec. 30, lots 5 to 17, inclusive, E½NW¼, NE¼SW¼.

The area described above contains approximately 1,186,700 acres.

2. As provided in the classification order, the following lands were segregated from appropriation under the general mining laws:

Boise Meridian, Idaho

Jump Creek Falls Site

T. 2 N., R. 5 W.,
Sec. 27, SW¼;
Sec. 28, SE¼SE¼;
Sec. 33, NE¼, SE¼SW¼, SE¼;
Sec. 34, W½NW¼.

This site contains 640 acres.

The remaining lands described above in paragraph 1, have been and will continue to be open to the mining laws, applications, and offers under the mineral leasing laws.

3. The segregative effect on the lands described in this order will terminate upon publication of this notice in the Federal Register as provided by the regulation in 43 CFR 2461.5(c)(2).

4. At 9:00 a.m. on November 7, 1983, the lands shall be open to operation of the public land laws and the lands described in paragraph 2 open to the mining laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 9:00 a.m. on November 7, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Larry L. Woodard,

Associate State Director.

October 3, 1983.

[FR Doc. 83-27766 Filed 10-12-83; 8:45 am]
BILLING CODE 4310-84-M

[CA 14326]

California; Realty Action, Modified Competitive Sale of Public Land in Nevada County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

Mount Diablo Meridian, California

T. 17 No., R. 8 E.,
Sec. 1, Lot 21.
Containing 3.03 acres more or less.

The above described land is being offered for sale under modified competitive bidding to the surrounding landowners as designated below. The parcel is completely surrounded by private land and is difficult and uneconomic to manage as part of the public lands. The parcel is not suitable for management by another Federal department or agency. The sale is consistent with the Bureau's planning system, and the public interest would be served by offering this land for sale.

Surrounding landowners are: Robert and Jean Greensfelder, Fred and Nancy Stutsman, San Juan Gold.

The terms and conditions applicable to the sale are:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. All minerals in the land will be reserved to the United States (43 U.S.C. 1719).

Federal law requires that bidders be U.S. Citizens or, in the case of corporation, subject to the laws of any State of the U.S. Proof of Citizenship shall accompany the bid. The sale will be conducted by oral bidding. Bids must be made by the principal or his agent at the time of the sale. No bids will be accepted for less than fair market value and bids for the parcel must include all the lands in the parcel. The apparent high bidder will be required to submit a nonrefundable deposit of one-fifth of the full bid price immediately after the sale. The remainder of the full price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and deposit shall be forfeited. The sale will be held at 10:00 A.M., December 16, 1983, at the Folsom Resource Area Office, Bureau of Land Management, 63 Natoma Street, Folsom, California 95630.

Detailed information concerning the sale, including the land report and environmental assessment report are available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the State Director, California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 83-27770 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-84-M

[C-36674 D-I & K]

Colorado; Realty Action Sale of Public Land in Delta County

The following described land has been examined and identified as suitable for disposal by sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value. All minerals except oil, gas, and coal beneath all the parcels will be sold to the successful high bidder pursuant to regulations found at 43 CFR Part 2720. Except as just stated the mineral interests being offered for conveyance have no known value. A bid will also constitute an application for conveyance of those mineral interests offered for conveyance. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Parcel	Legal description	Acreage
C-36674	Delta, Co, 6th Principal Meridian, Colo.	
D	T. 15 S., R. 95 W., Sec. 13, SW¼SE¼.	40.00
E	T. 15 S., R. 94 W., Sec. 19, NE¼SE¼.	40.00
F	T. 15 S., R. 94 W., Sec. 29, W½NE¼.	80.00
G	T. 15 S., R. 94 W., Sec. 32, W½NW¼.	80.00
H	T. 15 S., R. 94 W., Sec. 28, NW¼SW¼.	40.00
I	T. 15 S., R. 94 W., Sec. 32, SW¼SE¼.	40.00
K	T. 15 S., R. 95 W., Sec. 33, N½NW¼NE¼SE¼, NE¼NE¼SE¼.	6.25

Parcels F and G will be sold at public auction by competitive bidding. Parcels D, E, H, and I will be offered by public auction to adjacent landowners by competitive bidding. Parcel K will be offered directly to John F. and Kathryn F. Wolf at the appraised fair market value. The sale will be held at 10:00 a.m., December 14, 1983, at the Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado.

Bidding Information and Instructions: The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specified parcel.

Method of Bidding: Bids may be made either by sealed bids or personally at the sale. Bids sent by mail will only be considered if received by the Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81402, prior to 2:00 p.m., December 13, 1983. Bids accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the "Department of the Interior-Bureau of Land Management" for not less than one-fifth of the amount of the bid, must be in a separate sealed envelope within the transmittal envelope. The sealed envelope must be marked in the lower left-hand corner "Sealed Bid, Public Land Sale C-36674, Parcel Number —— (D, E, F, G, H, or I), Sale to be December 14, 1983". Sealed bids will be opened following bidder registration.

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid for each parcel is announced. If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The highest sealed bid will be the base for oral bids. If the highest bid is an oral bid, the successful bidder will be required to pay immediately one-fifth of the high bid price by cash, personal check, money order, bank draft, or any combination of these. The successful high bidder, whether by sealed or oral bid, will be required to submit the remainder of the land payment by cash, certified check, bank draft, money order, or any combination of these within 30 days after the determination of the highest bid.

The declared high bidder will be required to deposit a $50.00 non-refundable filing fee with an application for the minerals to be conveyed in addition to 20% of the bid immediately at the sale. Failure to deposit these sums will result in the disqualification of the high bidder.

Post Sale Instructions: If final payment is not received within the specified 30 days, the high bid is rejected, the deposit is forfeited, and the land will be offered to the second highest bidder, subject to the same terms and conditions. All unsuccessful sealed bids will be returned within 30 days of the sale.

Patents will contain the following reservations to the United States:

1. Rights-of-way for ditches and canals constructed by the authority of the United States (26 Stat. 391; 43 U.S.C. 945).

2. Oil, gas, and coal, with the right to explore, prospect for, mine, and remove under applicable law, and such regulations as the Secretary of the Interior may prescribe (43 U.S.C. 1719).

Further, patents will be subject to:

1. All valid existing rights,

2. Oil and gas leases involving all parcels.

If any of the parcels do not sell at the December 14, 1983 sale, the sale will be adjourned and the unsold parcel(s) will be reoffered on a continuing basis to the parties stated in paragraph two of this notice beginning on December 15, 1983 at 7:45 a.m. at the Montrose District Office until the parcels are sold or withdrawn. If any of parcels D, E, H, I,

or K, remain unsold after January 15, 1984, the unsold parcels will be reoffered on a competitive basis at the next Montrose District sale.

Detailed information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office. For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Montrose District Office. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Glen R. Marlow,

Montrose District Manager.

[FR Doc. 83-27768 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1983 Christmas Pageant of Peace, which opens December 15 on the Ellipse, south of the White House.

A public meeting will be held at the National Capital Region Building, 1100 Ohio Drive SW., 2nd floor, on November 1, at 10 a.m.

Interested persons who would like to comment at the meeting should notify the National Park Service by October 24, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at 426-6700. Persons who cannot attend the meeting can send written comments to: Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, D.C. 20242.

Dated: October 5, 1983.

Manus J. Fish,

Regional Director, National Capital Region.

[FR Doc. 83-27806 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-70-M

National Park System Advisory Board, Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the National Park System Advisory Board will be held at Yosemite National Park, California, October 27 and 28, 1983. Immediately prior to the general business sessions, the Advisory Board will tour sites in Golden Gate National Recreation Area, and Point Reyes National Seashore, California, on October 22-25, and Yosemite National Park on October 26.

The purpose of the Advisory Board is to advise the Secretary of the Interior on matters relating to the National Park System.

The members of the Advisory Board are: Mr. Alan J. Underberg (Chairman) Rochester, New York; Mr. D. Lindsay Pettus, Lancaster, South Carolina; Mr. Raymond J. Nesbit, Sacramento, California; Mr. Robert H. Adams, Valley Center, California; Honorable Gordon Allott, Englewood, Colorado; Mr. Charles Cushman, Sonoma, California; Mr. Fred E. Hummel, Carmichael, California; Dr. Robin Winks, New Haven, Connecticut; Mr. S. J. DiMeglio, McLean, Virginia; Mr. Harold E. Mischnick, Sr., Lincoln, Nebraska; Mr. John F. Turner, Moose, Wyoming, and Dr. Fred Wendorf, Dallas, Texas.

In its general business sessions starting at 9:00 AM at the Ahwahnee Hotel, Yosemite National Park, the Advisory Board will consider administrative matters pertaining to the Board; receive and discuss several committee reports; consider and make recommendations on proposed national historic landmark designations; and review and discuss policy and management issues affecting the National Park System.

The meeting will be open to the public. Space and facilities to accommodate members of the public at the business sessions are limited and persons will be accommodated on a first-come-first-served basis. Members of the public wishing to participate in the inspection tour must provide their own transportation. Any member of the public may file with the Advisory Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements may contact Shirley Luikens, Advisory Boards and Commissions, National Park Service, Department of the Interior, Washington, D.C. 20240 (202-343-2012).

Summary minutes of the meeting will be available for public inspection 10 to 12 weeks after the meeting in Room 3328, Interior Building, 18th and C Streets NW, Washington, D.C.

Jean C. Henderer,

Chief, Cooperative Activities Division, National Park Service.

[FR Doc. 83-27807 Filed 10-12-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the fifty-eighth meeting of the Board for International Food and Agricultural Development (BIFAD) on October 28, 1983.

The purpose of the meeting is to hear reports on recent developments in AID agricultural research programs and the activities of the Joint Committee on Agricultural Research and Development (JCARD); discuss a critique of Regional Strategic Plans; and receive a presentation on the Botswana Agricultural Education Project.

An invitation has been extended to W. Arthur Lewis, Princeton University, to make a presentation on a current topic in international agricultural development (but as of this writing it is not known whether he will attend).

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m., and will be held in Room 540, National Science Foundation, 1800 G Street, NW., Washington, D.C. The meeting is open to the public. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Coordinator, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Respresentative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Dated: October 6, 1983.

Curtis Barker,

Deputy Coordinator, Research and University Relations, Bureau for Science and Technology.

[FR Doc. 83-27779 Filed 10-12-83; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-166]

Import Investigations; Certain Computerized Jacquard Pattern Cutting Systems; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 7, 1983, under section 337 of the Tariff Act of 1930 (19 U.S. C. 1337), on behalf of Viable Systems, Inc., P.O. Box 438, Needham, Massachusetts 02192. The complaint alleges unfair methods of competition and unfair acts in the importation of certain computerized jacquard pattern cutting systems into the United States, or in their sale, by reason of alleged (1) direct infringement, (2) contributory infringement, and (3) induced infringement of claims 11 and 14 of U.S. Letters Patent 4,004,135. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order or, in the alternative, a permanent cease and desist order.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 5, 1983, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain computerized jacquard pattern cutting systems into the United States, or in their sale, by reason of alleged (1) direct infringement, (2) contributory infringement, and (3) induced infringement of claims 11 and 14 of U.S. Letters Patent 4,004,135, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Viable Systems, Inc., P.O. Box 438, Needham, Massachusetts 02192.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Grosse Webereimaschinen GmbH, Im Starkfeld 51, Postfach 1520, D-7910 Neu-Ulm, West Germany

Jerry Valenta & Sons, Inc., 1083 Goffle Road, Hawthorne, New Jersey 07506.

(c) Gary Rinkerman, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E. Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR § 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

By order of the Commission.

Issued: October 7, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-27980 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-145]

Import Investigations; Certain Rotary Wheel Printers; Commission Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commissoin has determined not to review the presiding officer's initial determination (Order No. 32) granting a joint motion (Motion No. 145-40) by complainant Qume Corporation (Qume) and respondent Fujitsu, Ltd (Fujitsu) to terminate the above-captioned investigation as to Fujitsu on the basis of a settlement agreement.

Authority

Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.53(c) and 210.53(h) of the Commission's Rules of Practice and Procedure (47 FR 25134, June 10, 1982, and 48 FR 20225, May 5, 1983; to be codified at 19 CFR 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On April 13, 1983, the Commission voted to institute investigations No. 337-TA-145, *Certain Rotary Wheel Printers*, on the basis of a complaint filed by Qume. Notice of the investigation was published in the **Federal Register** on April 20, 1983. 48 FR 16975. The purpose of this investigation is to determine whether there is a violation of section 337 in the unauthorized importation and sale of certain rotary wheel printers by virtue of their alleged infringement of certain claims of U.S. Letters Patent 4,118,129 (the '129 patent).

On August 30, 1983, Qume and Fujitsu filed a joint motion (Motion No. 145-40) to terminate Fujitsu as a respondent to this investigation on the basis of a settlement agreement. The motion was unopposed. The presiding officer issued an initial determination (Order No. 32) granting Motion No. 145-40 on September 7, 1983.

A notice seeking comments on the proposed termination of Fujitsu was published in the **Federal Register** on Sept. 12, 1983. 48 FR 40961 (1983). No

petitions for review or public or agency comments have been received.

Copies of the presiding officer's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

Issued: October 4, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-27881 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-158]

Certain Plastic Light Screw Anchors; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Gary Rankerman, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Arthur Wineburg, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: October 5, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-27682 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-148 (Preliminary)]

Fresh Cut Roses From Colombia

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: September 30, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially retarded, by reason of imports from Colombia of fresh cut roses, provided for in item 192.18 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Supervisory Investigator, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0439.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on September 30, 1983, on behalf of Roses, Inc., the U.S. commercial rose growers trade association. The Commission must make its determination in the investigation within 45 days after the date of the filing of the petition, or by November 14, 1983 (19 CFR 207.17).

Participation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than seven (7) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in the investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with § 201.8 of the Commission's rules (19 CFR 201.8), serve a copy of the nonconfidential version of each such document on all other parties to the investigation. Such service shall conform with the requirements set forth in § 201.16(b) of the rules (19 CFR 201.16(b), as amended by 47 FR 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certification of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before October 28, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR 207.15). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR 201.8).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on October 24, 1983, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator, Mr. John MacHatton (202-523-0439), not later than October 21, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207, as amended by 47 FR 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR 201, as amended by 47 FR 33682, Aug. 4, 1982). Further information concerning the conduct of the conference will be provided by Mr. MacHatton.

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR § 207.12).

Issued: October 5, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-27883 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 377-TA-161]

Certain Trolley Wheel Assemblies; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Harold Brandt, Esq., of the Unfair Import Investigations Division will be the Commission investigative attorney in the above-cited investigation instead of Jeffrey Neeley, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: October 5, 1983.

David I. Wilson,

Chief, Unfair Import Investigations Division.

[FR Doc. 83-27884 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-150]

Certain Self-Stripping Electrical Tap Connectors; Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9:00 a.m. on December 19, 1983, in Room 201, the Waterfront Center, 1010 Wisconsin Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The purpose of the prehearing conference is to hear argument on objections to exhibits, to get as many exhibits as possible into the record before the hearing starts, and to discuss any questions raised by the parties relating to the hearing.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 4, 1983.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 83-27865 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-116 and 117 (Final)]

Carton-Closing Staples and Nonautomatic Carton-Closing Staple Machines From Sweden

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a hearing to be held in connection with the subject investigations.

SUMMARY: The Commission hereby announces that a hearing will be held in connection with the subject investigations beginning at 10:00 a.m. on November 8, 1983.

EFFECTIVE DATE: October 5, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam Bishop, Office of Investigations, U.S. International Trade Commission, Washington, D.C. 20436 (202-523-0291).

SUPPLEMENTARY INFORMATION:

Background.—On June 2, 1983, the United States International Trade Commission instituted the subject antidumping investigations and scheduled a hearing to be held in connection therewith for August 11, 1983 (48 FR 28559, June 22, 1983). On August 2, 1983, however, the Department of Commerce informed the Commission that it was extending the investigations in response to a request from Josef Kihlberg Trading AB, a Swedish producer of the subject merchandise (notice published in 48 FR 36304, August 10, 1983). The effect of the extension was to change the scheduled date for Commerce to make its final less-than-fair-value determinations in the investigations from August 9, 1983, to September 15, 1983. Accordingly, the Commission cancelled the hearing scheduled for August 11 (48 FR 36009, August 8, 1983). On September 8, 1983, Commerce again extended the investigations, this time postponing the scheduled date for its final determinations until October 17, 1983 (48 FR 40533, September 8, 1983). As Commerce cannot extend the investigations further (see section 735(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1673d(a)(2)), the Commission is now establishing the remainder of its schedule for the investigations, which must be completed within 45 days of the date of Commerce's final determinations of sales at less than fair value (see section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on November 8, 1983, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 26, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 28, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 3, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's Rules of Practice and Procedure (19 CFR 207.23, as amended by 47 FR 33682, August 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR 207.22, as amended by 47 FR 33682, August 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 14, 1983.

Written submissions.—As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations (procedures for entering an appearance in the investigations were established in the Commission's original notice (48 FR 28559, June 22 1983)) may submit a written statement of information pertinent to the subject of the investigations on or before November 14, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of (19 CFR 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, August 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, August 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: October 6, 1983.

Kenneth R. Mason,

Secretary

[FR Doc. 83-27886 Filed 10-12-83; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30291]

Railroads; Pocono Northeast Railway, Inc;, Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11301 the issuance of two notes in the principal amounts of $450,000 and $375,000 by the Pocono Northeast Railway, Inc.

DATES: This exemption will be effective on October 12, 1983. Petitions to reopen must be filed by November 1, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30291 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative, Peter A. Gilbertson, 1575 Eye Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 5, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-27800 Filed 10-12-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that Rohm and Haas Company ("R&H") has filed with the United States District Court for the Eastern District of Pennsylvania a motion to terminate the final decree in *United States* v. *Rohm and Haas Co.*, Civil No. 9068; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on November 18, 1948) alleged that R&H and its co-conspirators had established and participated in a worldwide cartel to fix prices and allocate territories in the production and sale of acrylic products. The decree (entered on November 18, 1948) enjoins R&H from entering into any agreements or adopting any course of conduct with the purpose or effect of reinstating any of the cartel agreements; from establishing the prices or terms under which acrylic products will be resold; and from discriminating in price, terms or conditions of sale against purchasers of acrylic products on the basis of intended use. The decree also enjoins R&H from, among other things, agreeing with any person:

1. To allocate markets, territories or customers for the sale or distribution of any acrylic product;

2. to establish the terms and conditions to be imposed in licensing others under patents or inventions relating to acrylic products;

3. to fix, maintain or determine the prices to be charged to any other person for any acrylic product;

4. to restrict or limit the production, distribution or sale of acrylic products; and

5. to limit research in the field of acrylic products.

Under the decree, R&H was ordered to grant all applicants nonexclusive and royalty-free licenses concerning specified patents and patent applications of R&H. Each of the patents encompassed by this order has now expired.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the complaint and final judgment, R&H's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, 601 Market Street, Room 2609, Philadelphia, Pennsylvania 19107. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to John W. Poole, Jr., Chief, Special Litigation Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone 202-633-2425).

Joseph H. Widmar,

Antitrust Division Director of Operations.

[FR Doc. 83-27821 Filed 10-12-83; 8:45 am]

BILLING CODE 4410-01-M

United States v. GTE Corporation; Proposed Final Judgment and Competitive Impact Statement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the Department of Justice publishes copies of the public comments, and its response thereto, on the proposed Final Judgment filed in the case of *United States* v. *GTE Corporation*, Civil Action No. 83-1298.

The comments of the Public Service Commission of West Virginia, the State of Hawaii and MCI Telecommunications Corporation were accompanied by documentary exhibits. These appendices are not being published herein. The exhibits of the Public Service Commission of West Virginia and the State of Hawaii will be available for inspection by the public at either the office of the Clerk of the Court, United States Courthouse, John Marshall Place, Washington, D.C. 20001, or at the Legal Procedure Unit, Antitrust Division, Department of Justice, 10th Street and Constitution Avenue NW., Washington, D.C. 20530. The availability for public inspection of certain MCI exhibits must be determined by the Court pursuant to its July 15, 1983, Order temporarily sealing the MCI submissions. Once this issue is finally determined by the Court, any unsealed exhibits submitted by MCI will be available for inspection by the public at either the office of the Clerk of the Court or at the Legal Procedure Unit.

Antitrust Division, Department of Justice.

Joseph H. Widmar,

Antitrust Division, Director of Operations.

United States of America, Plaintiff, v. *GTE Corporation*, Defendant; Civil Action No. 83-1298.

Comments of American Telephone and Telegraph Company

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), American Telephone and Telegraph Company ("AT&T") submits these comments with respect to the proposed Final Judgment in this action.

The Final Judgment would permit GTE Corporation to acquire Southern Pacific Communications Company and Southern Pacific Satellite Company from the Southern Pacific Company. GTE would thereby combine, through common ownership, the interexchange operations of these Southern Pacific companies with GTE's existing exchange operations (the "GTOCs") and with GTE's existing research, development, and manufacturing operations.

The Modification of Final Judgment ("MFJ") in *United States v. Western Electric*, No. 82-0192 (D.D.C.), requires AT&T to terminate its integrated ownership of these same kinds of operations. Pursuant to that judgment, AT&T will, on January 1, 1984, divest the Bell System's exchange operations and facilities in the form of reconfigured BOCs to be held by seven separately-owned regional holding companies. *See* Opinion, July 8, 1983, No. 82-0192 (D.D.C.) at 3 n.5.

The Final Judgment in this action and the Modification of Final Judgment in *United States v. Western Electric* thus differ fundamentally in the degree of integrated ownership that is permitted GTE and AT&T in the telecommunications industry. This difference has potentially significant effects upon AT&T in its relation with GTE as competitor, customer, supplier, and partner in the provision of telecommunications services and equipment:

1. The Southern Pacific telecommunications companies are major competitors of AT&T in the interexchange market. Under the Final Judgment, they will be operated under common ownership with GTE's exchange access facilities, whereas the Modification of Final Judgment prevents AT&T's continued integrated ownership of its interexchange and exchange operations.

2. AT&T's interexchange operations will be the principal customer of the GTOCs' exchange access service in most market areas, where AT&T will face real or potential competition from the GTOCs' affiliate, Southern Pacific, which will also receive access service from the GTOCs.

3. AT&T will compete with GTE's manufacturing operations for sales of equipment to GTE's affiliated exchange and interexchange operations.

4. Bell System companies and the GTOCs have heretofore engaged in the provision of telecommunications services under a partnership arrangement through which costs were apportioned and revenues shared under settlement agreements. Under the Final Judgment, the GTOCs will phase out their existing interexchange facilities and partnership agreements. (Competitive Impact Statement at 17-21, 48 FR at 22029).[1]

The Department of Justice has stated that GTE's common ownership of Southern Pacific's interexchange operations raises the same antitrust issues as those in *United States v. Western Electric Co.* (Competitive Impact Statement at 8, 48 FR at 22027), and in several respects the GTE Final Judgment parallels the MFJ. But on the fundamental issue of common ownership of exchange and interexchange facilities, GTE's Final Judgment reflects a different, inconsistent resolution of the Justice Department's suit to prevent GTE's unrestricted common ownership of such operations.

For these reasons, AT&T has grave concerns about its position in the industry as restructured by the MFJ and the Final Judgment. AT&T therefore requests the right to participate in support of its interests in further proceedings that the Court may order with respect to the Final Judgment, including GTE filings in implementation of the Final Judgment,[2] any response to public comments and the Justice Department's reply to such comments.

Respectfully submitted,

Alfred A. Green,
Jim G. Kilpatric,
Francine J. Berry,
195 Broadway,
New York, New York 10007
John D. Zeglis,
Lee M. Mitchell,
1722 Eye Street, N.W., Washington, D.C. 20006, (202) 429-4000
Attorneys for American Telephone and Telegraph Company.
Of Counsel:
Howard J. Trienens,
Sidley & Austin

Dated: July 15, 1983.

United States of America, Plaintiff, v. *GTE Corporation*, Defendant; Civil Action No. 83-1298.

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[1] The Bell System's divested BOCs may likewise be affected by the difference in the two decrees. For example, the BOCs are prohibited entirely from providing information services (MFJ, Section II), but the GTOCs may continue to offer information services through separate organizations (and, directly after five years).

[2] On July 5, in accordance with paragraph I(H) of the proposed Final Judgment, GTE filed proposed GTOC Exchange Areas, and, in accompanying documentation, GTE identified a number of instances where its proposals differed from BOC classifications of Bell-Independent traffic and of the resulting BOC associations of ITC territory with BOC LATAs. The Court's opinion of July 8, 1983 in *United States v. Western Electric* is dispositive of all questions—including those raised in GTE's July 5 submission—relating to BOC LATAs and the association of BOC LATAs with adjacent ITC territory. GTE's submission of Exchange Areas should therefore be modified to conform to the Court's July 8 opinion in the related AT&T case. *See* Memorandum Opinion dated May 6, 1983, granting the Department's request to treat the GTE proceedings as a "related case" to *United States v. Western Electric*, at pp. 3-4.

Comments of Ameritech on the Proposed Final Judgment

These comments are submitted on behalf of American Information Technologies Corps., ("Ameritech"), the proposed holding company for the Bell operating companies in the states of Illinois, Indiana, Michigan, Ohio and Wisconsin. Ameritech will be an actual or potential competitor of GTE in certain non-regulated products and services, including CPE and directory advertising. The proposed decree (*GTE* Decree) will afford GTE substantially more competitive freedom than Ameritech will have, so long as the line-of-business restrictions of the Modified Final Judgment (*AT&T* Decree) in *U.S. v. Western Electric*, 1982-2 Trade Cas. (CCH) ¶ 64,900 (D.D.C. 1982), preclude Ameritech from providing interexchange telecommunications, information services and other products and services that GTE may provide. Nevertheless, Ameritech believes the basic provisions of the proposed decree are consistent with the common competitive objectives of the *GTE* and *AT&T* Decrees and are in the public interest.

A. Comparison of the GTE and AT&T Decrees

The common objective of the two decrees is to promote competition in intercity telecommunications and information services. The two decrees are designed to remove any incentive and ability of telephone operating companies to impede competition in those markets by improperly leveraging any monopoly characteristics of their local exchange franchises. Thus, both decrees are designed to prevent operating companies from favoring affiliated companies in those markets and from subsidizing intercity and information services with profits from their regulated exchange operations.

The two decrees contain identical substantive provisions requiring the Bell and GTE operating companies to provide equal access to all intercity carriers and information service providers and prohibiting discriminatory treatment of carriers and providers not previously or currently affiliated with the operating companies. (AT&T Decree ¶ II A, B; GTE Decree ¶ V VA, B). These provisions effectively remove any ability of the operating companies to impede competition in the intercity and information services markets.

As an additional safeguard, both decrees provide for structural separation of operating companies from intercity and information services functions, in order to remove any incentive for potential abuse of any exchange monopoly power in the intercity and information service market. However, the decrees fundamentally differ in the structural separation required.

The *AT&T* Decree achieves complete structural separation of the Bell System's exchange operations from its intercity and information services businesses by requiring AT&T to divest the Bell operating companies and by initially prohibiting the operating companies and their regional holding companies from engaging in interexchange telecommunications and information services. (*AT&T* Decree ¶ II D1.) The Bell

operating companies or their regional holding companies may re-enter the intercity and information services businesses with the approval of the Court upon a showing that their is no substantial possibility of their use of any monopoly power to impede competition in those markets. (*AT&T* Decree ¶ VIII C.)

The *GTE* Decree permits GTE to enter the intercity telecommunications business on a significant scale by acquiring Southern Pacific Communications Company (SPCC) and Southern Pacific Satellite Company (SPSC). To limit any incentive for the GTE operating companies to favor SPCC and SPSC over other intercity carriers and to prevent cross-subsidization, the *GTE* Decree contains a complex series of restrictions to maintain separation of the acquired entities from the operating companies. Thus, it provides for the separation of assets, facilities, directors, personnel, books of account, costs and expenditures (¶ IV A1, 2), prohibits the disclosure of proprietary operating company telecommunications information to the acquired entities (¶ IV A3), prohibits the acquired entities from obtaining certain support services from, or providing such services to, the operating companies (¶ IV A4), regulates the acquired entities' acquisition of services, products and information from GTE (¶ IV A7), and prohibits the operating companies and the acquired entities from jointly providing telecommunications or information services (¶ IV A6).

The *GTE* Decree contains a provision similar to that of the *AT&T* Decree prohibiting the GTE operating companies from providing interexchange telecommunications, but provides for a transitional phase-out of their existing interexchange operations. (*GTE* Decree ¶ V C.) Unlike the *AT&T* Decree, which prohibits the Bell operating companies from providing information services without the Court's approval, the *GTE* Decree permits the GTE operating companies to provide such services through separate subsidiaries or divisions, subject to certain separation requirements. (*GTE* Decree ¶ V D2.)

The *GTE* Decree does not contain provisions similar to those of the *AT&T* Decree that prohibit the Bell operating companies, without Court approval, from engaging in lines of business other than exchange telecommunications, exchange access, CPE marketing, directory advertising and monopoly services regulated by tariff. (*AT&T* Decree ¶¶ II D3, VIII A, B.) Thus, GTE is permitted to engage in any business within or without the telecommunications industry, subject to the decree's requirement of structural separation between its exchange operations and intercity and information services businesses.

In short, the two decrees have the identical purpose of preventing operating companies from impeding competition in the intercity and information services markets by leveraging their exchange franchises. The decrees impose substantively identical equal access and nondiscrimination obligations on the Bell and GTE operating companies, but adopt different structural models to promote competition in the intercity and information services markets.

B. The Adequacy of the GTE Decree

While the structural separation provisions of the *GTE* Decree are substantially different than the absolute line-of-business restrictions imposed on the Bell operating companies and their regional holding companies at the outset by the *AT&T* Decree, Ameritech believes the *GTE* Decree is fully adequate to ensure the common objectives of the two decrees. Indeed, the *GTE* Decree provides redundant protections against the GTE operating companies' leveraging of their exchange operations in the intercity or information service markets. First, the decree's equal access provision unequivocally requires that exchange access, information access and exchange services be provided to all intercity carriers and information service providers on an equal basis. (¶V A.) Second, the nondiscrimination provisions reinforce that obligation by prohibiting the operating companies from discriminating a favor of GTE's intercity or information services business in planning for and providing exchange or information access. (¶V B.) Third, the structural separation provisions of the decree effectively insulate the management and operation of GTE's exchange telecommunications business from its intercity and information services businesses and prohibit the joint marketing of intercity and information services with exchange services. (¶¶ IV A, B, C; V D.) Finally, the decree's provisions for the separation of assets, facilities, services, books of account and costs, combined with the ratemaking oversight provided by federal and state regulators, provided effective safeguards against any cross-subsidization of GTE's intercity and information services operations. (¶¶ IV A; V D2.) These redundant and mutually reinforcing safeguards effectively remove any opportunity for GTE to leverage its exchange operations in the intercity and information services businesses.

The Department of Justice distinguishes the different structural provisions of the *AT&T* and *GTE* Decrees on the ground that they address different factual contexts. The Department notes that AT&T "historically has been fulled integrated, with common facilities, personnel and joint and common costs." *Competitive Impact Statement* at p. 44. In the GTE context the Department states that "the separate subsidiary requirement is imposed on the two firms that have never been integrated . . . ." *Id.* Thus, "[u]nlike the situation in *AT&T*, where a vertically intergrated structure had been in existence for more than a century, GTE has never been operated in common with SPCC." *Id.* at p. 50.

C. The Public Interest

Approval of the *GTE* Decree will serve the public interest. The decree affords GTE the opportunity to engage in all aspects of the telecommunications business, as well as any business outside the telecommunications industry, while adequately protecting against the leveraging of any monopoly power by the GTE operating companies. It thus provides the public the benefits of a strong and effective competitor in GTE's existing and newly-acquired businesses, as well as any other business GTE may choose to enter in the future. In particular, it provides the benefit of GTE's participation in the intercity telecommunications market as a competitor of AT&T.

Indeed, Ameritech believes the structural model of the *GTE* Decree is substantially more consistent with the public interest than the rigid line-of-business restrictions of the *AT&T* Decree. Even if those restrictions are considered appropriate at the outset to effectuate the divestiture of the integrated Bell System, they are both unnecessary and contrary to the public interest once the Bell operating companies are divested. The equal access, nondiscrimination and structural separation provisions of the *GTE* Decree fully achieve the two decrees' common objective of promoting competition in the intercity market.

The line-of-business restrictions on the Bell regional and operating companies will not serve the public interest in the longer term. They limit the opportunities of the Bell regional companies to enter and become effective competitors in all but limited areas of the telecommunications industry. Of particular concern, they prevent the regional companies from engaging in intercity and information services, which are among the fastest growing and most profitable aspects of the industry. By restricting the Bell regional and operating companies' business opportunities, the line-of-business restrictions ultimately could compromise their ability to remain financially viable and to provide leading-edge technology to the millions of customers they serve.

Ameritech supports the basic concept of the *GTE* Decree as the appropriate structural model to permit the Bell regional companies to enter the intercity and information services markets in the future, consistent with the procompetitive objectives of the MFJ.

Conclusion

For the reasons stated, Ameritech supports the basic provisions of the proposed *GTE* Decree as consistent with the decree's' competitive objectives and in the public interest. The equal access, nondiscrimination and structural separation provisions of the decree provide ample and redundant protection against any leveraging of GTE operating companies' exchange operations in competitive markets. The line of business restrictions initially imposed on the Bell operating companies by the *AT&T* Decree are not needed to prevent any such leveraging.

Kenneth E. Millard,
Jeffrey J. Kennedy,
Attorneys for Ameritech.

Of Counsel:
Kirkland & Ellis,
200 Randolph Drive, Chicago, Illinois 60601,
(312) 861-2000.
July 15, 1983.

Harry E. German, 962 Alla Avenue, Concord, CA. 94518

June 1, 1983.

Federal Communications Commission, Washington, D.C.

Dear Gentleperson: I am writing to express my opposition to the proposed merger of *Southern Pacific Company's Sprint* system with that of GTE.

This proposed merger would form an oppressive, monopolistic communications company which would only serve to create unconstitutional restraint of trade and stifle competitive free enterprise, which will cause unconscionable impairment to the public interest in America.

The unlawful combination of *Sprint* and *GTE* would create excessively high phone rates by allowing absolute control of "communication corridors" and their corresponding tariff rate structures by GTE.

For this reason, such 'horizontal conglomerate growth' has been prevented by the patriotic fortitude of our members of the executive, legislative, and judicial branches of our government. To allow *GTE's* acquisition of *SPRINT*, would only serve to hasten the destruction of economic freedom of competition that is so cherished by the American people.

The collateral repercussions of allowing such an illegal combination would be to fuel the rise in inflation and interest rates by increasing the *daily* money supply by $750 million, and billions of dollars ———— in anticipated bank loans would be generated from such a massive dose of "borrowed money"—further increasing the money supply and raising interest rates. Should such an economic catastrophe be allowed to occur, most economists (such as Greenspan, Soloman, Dean Whittier, and Merle Lynch—and other well known brokerage houses and economists) have predicted interest rates of 20%–25%. Such business "arrangements" proposed by Southern Pacific and GTE would only serve to kill and destroy America's rebound from the recession.

Finally, it has often been mentioned to me (by Southern Pacific's management personnel) that *Southern Pacific Company's Sprint* subsidiary employs jamming devices that destroys the electronic capacity for communications via satellite that the *MCI* company relies upon to service its customers. The bad faith of Southern Pacific Company is already apparent, and could most easily be carried on to a greater degree by *GTE*. Southern Pacific Company has run the Sprint company (ie. the 'communications company') most profitably since its inception. Phone rates are only beginning to be competitive. Please do not allow these companies to erode the health of the economy. Please prevent non-competitive atmospheres in the industry. The American people look to our country's leaders to protect them from oppressive business enterprises. It is easily foreseeable by the most common layperson that railroad monopolies and communication oligopolies destroy our country's economic, social, and political structure.

Please make America stronger and strike down this proposal between Southern Pacific Company and GTE.

Sincerely,

Harry E. German.

United States of America, Plaintiff, v. *GTE Corporation*, Defendant; Civil Action No. 83–1298.

Comments of the State of Hawaii

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act,[1] commonly known as the Tunney Act, the State of Hawaii ("State"),[2] by its attorneys, hereby submits its comments on the "Final Judgment" entered into by the United States and the GTE Corporation ("GTE") and filed with this Court on May 4, 1983 in the above-captioned proceeding.

I. Interest of the State of Hawaii

Hawaii is one of the states of the Union. GTE, through its wholly-owned operating company, Hawaiian Telephone Company ("HTC") is the overwhelmingly dominant provider of telecommunications services in Hawaii. HTC currently provides intrastate exchange services and intrastate toll services in the State; interexchange services between the State and the Mainland; interexchange services between the State and United States overseas points such as Guam, American Samoa and the Northern Mariana Islands; and international services between the State and foreign points. Southern Pacific Communications Company ("SPCC"), now operating as GTE Sprint, currently provides interstate interexchange services between Hawaii and the Mainland.[3]

The Court's decision concerning both the acquisition itself and the conditions of the acquisition as embodied in the Final Judgment will have a direct and significant impact upon telecommunications services in Hawaii. The State is a user of these services, virtually all its citizens use these services and its economy is directly affected by the availability, quality and cost of these services. The State, therefore, has an interest to assure that adequate telecommunications services remain available in Hawaii, at reasonable cost.

II. Summary of Argument

Under the Tunney Act, the Court must consider whether the Final Judgment is consistent with the public interest. In making this determination, the Court is to consider "the competitive impact of the judgment . . . and the impact of entry of such judgment upon the public generally."[4] As the Court has stated, it must assess both the effects on competition and on other important public policies.[5]

On the limited information which has been made available, neither interested parties nor the Court can make a reasoned assessment as to whether or not the Final Judgment comports with the public interest. The Final Judgment comports with the public interest. The Final Judgment approves the acquisition by GTE of a competitor in the Hawaii-Mainland interexchange telecommunications market. In vitally import areas, the provisions of the Final Judgment are confusing, unclear and conflict with the representations contained in the Competitive Impact Statement. A number of fundamental issues are unresolved, such as whether HTC currently the dominant interexchange carrier serving Hawaii, is barred from providing interstate interexchange service and the entity or entities which will control the major facilities for the provision of Hawaii-Mainland interexchange service. Depending upon how these crucial issues are resolved, the Final Judgment also leaves unanswered basic policy issues, such as whether or not the provision of basic services will be disrupted and whether large rate increases in local service will result. The Final Judgment apparently would also necessitate a division between HTC's local exchange and interstate operations but provides no details as to how the separated operations will be structured. There is no assurance that HTC can continue to provide an economically viable local exchange service.

Thus, the proposal before the Court presents very serious questions about the quality of competition, and the viability of the company which will continue to provide local exchange service as well as the effect on local rates. The Court in *United States* v. *American Telephone & Telegraph Co.*, a precedent that the parties to the settlement seek to invoke, has addressed these issues. In contrast to that precedent, this case presents an acquisition where the acquiring company greatly benefits from the proposal. Thus the concern for the quality and price of local service and for the preservation of competition may be even greater in the instant case.

In the State's view, before the Court can even begin to make a public interest assessment, it must require, on the record, clarification of the terms of the Final Judgment. In addition, it must require the submission of additional information on the record which specifies the manner in which the Final Judgment will be implemented *e.g.*, a Plan of Reorganization. After these additional submissions are filed, the State and other interested persons will be in an adequate position and should be provided with an opportunity to comment on whether

[1] 15 U.S.C. 16(b) (1976). *See Memorandum Order* at 1, *United States* v. *GTE Corp.*, No. 83–1298 (D.D.C. filed June 10, 1983).

[2] These comments are filed by the State of Hawaii, acting through its Governor and the Department of Commerce and Consumer Affairs.

[3] HTC is the monopoly provider of local exchange services and international services. In partnership with AT&T, it is the overwhelmingly dominant provider of Hawaii-Mainland telephone services and possesses all but a negligible share of this market. HTC also is a major provider of Hawaii-Mainland private line services. HTC owns the facilities used to provide its exchange, domestic interexchange and foreign services. The State's pleading before the Federal Communications Commission concerning this acquisition set forth in greater detail the relevant markets in this case. *See, e.g.* State of Hawaii Petition to Deny Unless Conditioned, ENF–83–1 (filed Dec. 3, 1983) (refiled Dec. 6, 1982). State of Hawaii Reply ENF–83–1 (filed Dec. 30, 1982).

[4] 15 U.S.C. 16(e) (1976).

[5] *United States* v. *American Telephone & Telegraph Co.*, 522 F. Supp. 131 (D.D.C. 1982), *aff'd sum. sub nom. Maryland* v. *United States* — U.S. —, 103 S. Ct. 1240 (1983). The Court has stated that it "would be justified in rejecting the proposed decree of requiring its modification if it concluded that the decree unnecessarily conflicts with important public policies other than the policy embodied in the [antitrust laws]." *Id.* at 151.

or not the Final Judgment should be approved and what modifications, if any, must be made to further the public interest. In the State's view, the Court, if it approves the Final Judgment, should assure that HTC and the other operating companies do not bear the costs of equal access. Although the Court, with additional information, may find the Final Judgment is not in the public interest or other conditions may be warranted if it approves the acquisition, at a minimum, it should impose the conditions proposed by GTE and accepted by the Commission relative to Hawaii.

III. There is Insufficient Information for the Court To Assess Whether the Final Judgment Comports with the Public Interest

A. *Prohibition on Interexchange Services*

One of the most confusing aspects of the Final Judgment relates to the ability of HTC to continue to provide interstate interexchange services. Section V.C.1 of the Final Judgment appears by its terms to flatly prohibit any GTE operating company ("GTOC") including HTC,[6] from providing any interexchange services in the United States:[7]

No GTOC shall provide interexchange telecommunications services or own jointly with GTE or any other person facilities that are used to provide such service . . .[8]

The Competitive Impact Statement ("CIS") appears to be at odds with the absolute prohibition against the provision of interexchange services that Section V.C.1 would suggest. The "explanation" in the CIS is that "there is a ban on the provision by the GTOCs of interexchange services *beyond those currently existing*."[9] The CIS states that there is "a general prohibition against *expansion* by the GTOCs of their present interexchange functions.[10] The implication of this statement is that HTC is free to continue to provide the interstate services that it offers but is prohibited from providing new types of interexchange services or generally expanding the scope of existing services.

Unlike the situation with the other independent companies, HTC actively markets interstate services. HTC maintains its own MTS and WATS tariffs with the Federal Communications Commission apart from the tariffs filed by AT&T for its MTS and WATS service.[11] AT&T's MTS and WATS tariffs provide for service from the Mainland to Hawaii[12] whereas HTC's MTS and WATS tariffs[13] provide for service from Hawaii to the Mainland.[14] In addition HTC maintains its own interstate private line tariffs.[15] Therefore, there can be little doubt that HTC in fact provides interstate services its role is not limited to the provision of interexchange facilities.

The interpretation of this provision has immediate and profound effects upon the State. A partnership comprised of HTC and the American Telephone & Telegraph Company ("AT&T"), provides interstate Message Telecommunications Service ("MTS") and Wide Area Telecommunications Services ("WATS") between Hawaii and the Mainland. HTC's partnership with AT&T differs from AT&T's partnership with any other GTE operating company, and indeed with any other independent telephone company.

A literal interpretation of Section V.C.1 presents a number of significant problems and uncertainties. First, it arises the spector of immediate and profound disruption of basic service. HTC is the overwhelmingly dominant provider of interstate telephone services between Hawaii and the Mainland. Indeed, until SPCC extended its SPRINT service to Hawaii on May 5, 1983,[16] HTC was the only facilities-owning carrier which provided these services although SPCC does not presently own the facilities that it uses to provide Hawaii-Mainland service. Although at the present time, alternatives to HTC exist in the provision of interstate telephone service, the other carriers providing these services, in the aggregate, possess only a negligible share of the Hawaii-Mainland telephone service market. It would be impossible for these carriers to immediately absorb all the customers of the dominant carrier and provide those carriers equal access to the local exchange. If the present provider were suddenly prevented from providing basic interstate telephone service, as the Final Judgment apparently suggests, services disruptions could occur[17] and there is nothing in the record to show how disruption would be avoided.

Moveover, as described in greater detail in II.B., *infra*, there is significant uncertainty surrounding the disposition of HTC's interexchange facilities, as well as the carrier or carriers which will utilize these facilities to provide Hawaii-Mainland telecommunications services. The uncertainties relating to the disposition of these facilities would only magnify the disruption resulting from an immediate ban in the continued provision of interstate interexchange services by HTC.

Second, an immediate ban on the provision of interexchange services could result in precipitous increases in local rates. HTC's interstate services are significantly more profitable than its intrastate operations. HTC expects to obtain approximately $164.2 million revenues for its interstateservices in 1982 and incur approximately $71.8 million in operating expenses for its interstate services in 1983. For local exchange service, it expects to obtain only approximately $140 million in revenues in 1983 but expects to incur approximately $101 million in operating expenses.[18]

If the revenues from HTC's interstate services are suddenly curtailed, a danger exists that the company may have to recover the sharp reduction in revenues from the local ratepayers, thereby threatening the public interest objective of maintaining universal service.[19] There is no showing of how HTC's viability will be maintained, or the effects on local exchagne service or local exchange rates.

In *United States v. American Telephone & Telegraph Company*, the court recognized the importance of protecting the local operating companies that provide basic service:

[T]he Court expects . . . to do what it legitimately can to strengthen the ability of the Operating Companies to function as viable entities, not dependent upon inordinate rate increases for their survival. . . . [T]he health of the Operating Companies is . . . a legitimate concern of the Court. . . .

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[6] HTC is specifically listed as a GTF Operating Company ("GTOC") in the Final Judgment, *see*, Final Judgment at II.K and App. A, *United States* v. *GTE Corp.*, No. 83-1298 (D.D.C. filed May 4, 1983) [hereinafter referred to as "Final Judgment"].

[7] Section V.C.1 of the Final Judgment specifically permits HTC to continue to provide international services. *Id.* at V.C.1.

[8] *Id.* at V.C.1.

[9] Competitive Impact Statement at 9, *United States v. GTE Corp.*, No. 83-1298 (D.D.C. filed May 4, 1983) [hereinafter referred to as "CIS"] (emphasis added).

[10] *Id.* at 18. (emphasis added)

[11] *See* Hawaiian Telephone Co., Tariff F.C.C. No. 4; Hawaiian Telephone Co., Tariff F.C.C. No. 13.

[12] *See* American Telephone & Telegraph Co., Tariff F.C.C. No. 259, at 17th Revised Page 15 through 6th Revised Page 23.1; American Telephone & Telegraph Co., Tariff F.C.C. No. 263, at 15th Revised Page 26.2.

[13] *See* Hawaiian Telephone Co., Tariff F.C.C. No. 1, at 5th Revised Page 6, 29th Revised Page 17. Hawaiian Telephone Co., Tariff F.C.C. No. 13, at 1st Revised

[14] HTC's Hawaii-Mainland MTS tariff contain the same rates as AT&T's Mainland-Hawaii MTS tariff but HTC's WATS tariff contains both rates and a rate structure which is different from those of AT&T.

[15] *See* Hawaiian Telephone Co., Tariff F.C.C. No. 5.

[16] *See Southern Pacific Communications Co.*, Transmittal No. 252, Mimeo No. 41583 (released May 9, 1983) (Memorandum Opinion and Order by the Chief, Common Carrier Bureau, Federal Communications Commission).

[17] In fact, interexchange carriers other than HTC depend upon the subscriber's capacity to tone signal, not pulse signal. Most subscribers in Hawaii are presently unable to tone signal.

[18] Hawaiian Telephone Company, "Category Cost-of-Service Study Total Company Contribution Analysis Test Year 1983 at Present Rates," Hawaii Public Utilities Commission, Docket No. 4588 Exh. HTC 1900 at 7.

[19] As described in III.B. the Final Judgment provides GTR with a number of options concerning HTC's interexchange facilities. To the extent that these options could be quickly implemented and to the extent that these alternatives would result in revenues to HTC, the shortfall would be lessened. Yet, there is no information provided on these matters. Until additional information is provided, it is impossible to assess whether and the extent to which inordinate rate increases can be avoided. Therefore, before it can approve the acquisition as consistent with the public interest, the Court must obtain such information and provide all the safeguards necessary to assure that universal service in Hawaii is not threatened. The Court stated that one of its principal objectives in exercising its Tunney Act responsibilities is the "protection of the principle of universal service. . . ." *United States v. American Telephone & Telegraph Co., No. 82-0192, slip op. at 150 (D.D.C. July 1983). See also* 47 U.S.C. § 151 (1976).

There can be no doubt that the continued viability of the Operating Companies is in the public interest. These companies . . . assume the responsibility of providing basic local telephone service, and it is upon them, too, that will depend the realization of the goal of universal service; *i.e.*, the goal of providing affordable telephone service to all, including those who are not affluent oe who reside in relatively isolated areas.[20]

The Court must be provided with adequate informatio to be assured thi the goal of universal service is not threatened in Hawaii.

A further difficulty with the literal interpretation of Section V.C.1 is that it directly conflicts with Section 214 of the Communications Act of 1934. Section 214(a) provides that:

No carrier shall discontinue, reduce, or impair service to a community or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the public nor future public convenience and necessity will be adversely affected thereby . . . .[21]

Authorization to discontinue service between Hawaii and the Mainland has not even been applied for, let alone granted by the Federal Communications Commission. Section V.C.1, if construed to require the immediate termination of service between Hawaii and the Mainland if approved by this Court, would force GTE in an untenable position: It could continue to provide Hawaii-Mainland telecommunications service via HTC and violate this Court's order or it could immediately terminate this service and violate Section 214 of the Communications Act. It is obvious that neither alternative would comport with the public interest.

If Section V.C.1 does not absolutely prohibit HTC from continuing to provide its existing domestic interexchange services, other issues are raised. There is no explantion or discussion as to the transition period—if indeed one exists—in which current services are permitted to continue or the time frame, if any, in which these services must terminate. There is no discussion as to whether HTC can or cannot provide existing service to new users or whether it can or cannot offer new interexchange services.

B. *Exemption for HTC's Foreign Services*

The Final Judgment contains an express exception to the ban, or possible ban, on the provision of interexchange services and the joint ownership of interexchange facilities for HTC's international services:

[N]othing in this Final Judgment shall prohibit Hawaiian Telephone Company . . . from providing telecommunications services between Hawaii and . . . points outside of the United States, and owning the assets necessary to provide such services.[22]

The CIS describes this exception to apply to HTC's "international telecommunications" to "foreign countries."[23]

A question arises as to whether or not service between Hawaii and the United States-controlled Northern Mariana Islands is included within the exception for "international" services contained in Section V.C.1. Local, United States domestic and international telecommunications services for the Northern Mariana Islands are currently provided by the Micronesian Telecommunications Corporation ("MTC"), a wholly-owned subsidiary of HTC.[24] If telecommunications services between Hawaii and the Northern Mariana Islands are "domestic" interexchange services within the scope of the Section V.C.1, as both the Final Judgment and CIS clearly imply, HTC and MTC[25] could be prevented from providing such services. As there are no competitive alternatives, this would raise public interest concerns regarding possible disruptions of service. In the State's view, clarification is needed as to the status of service between Hawaii and United States-controlled points such as the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

C. *Prohibition on Interexchange Facilities*

In addition to the ban, or possible ban, on the provision of interexchange services, Section V.C.1 contains a stated prohibition on the ownership of joint facilities used to provide interexchange services. Specifically, Section V.C.1 provides that

No GTOC . . . own jointly with GTE or any other person facilities that are used to provide [interexchange telecommunications] services, provided that nothing in this Final Judgment shall prohibit Hawaiian Telephone Company . . . from providing telecommunications services between Hawaii . . . and points outside the United States, and owning the assets necessary to provide such services.[26]

There are several apparent qualifications to the prohibition on the joint ownership of interexchange facilities. According to the CIS, Section V.C.2, V.C.3 and V.C.4 "allow several alternative methods by which the GTOCs' existing interexchange operations are to be phased out over a transition period."[27]

Section V.C.2 provides, in effect, that notwithstanding this prohibition, the interexchange switching and interexchange transmission in facilities in service on January 1, 1984 of the operating company may be leased to an interexchange carrier with which the company provided joint interexchange services.[28] With respect to HTC's Hawaii-Mainland services, this provision apparently would enable it to lease its interexchange facilities to AT&T.

Where no such leases have been established and where the operating company has not recovered its capital investment, Section V.C.3 permits a GTOC to replac[e] existing agreements with the BOCs with an agreement with an interexchange carrier (other than the acquired entities) that will permit the recovery of net book value of such capital investment and the costs thereof, including a return on debt or equity, so long as that agreement terminates when such net book value has been recovered.[29]

As PTC, unlike the other GTOCs, has an agreement with the AT&T Long Lines Department rather than with one of the entities generally understood to be a BOC, the scope of Section V.C.2 possibly could be construed to exclude HTC. Yet the definitions contained in the Final Judgment lead to a contrary result.[30] Moreover, the CIS, in explaining this provision, states that it "permits a limited retention of the division of revenues process for any interexchange facilities that are not leased by the GTOCs under Paragraph (V)(C)(2)."[31] There is no indication in the CIS to indicate any intent that HTC is excluded from the scope of this section. If this section is to apply at all to HTC,[32] apparently it would permit HTC to retain its present division of revenues agreement with AT&T or to replace this agreement with a comparable agreement with another interexchange carrier.

Section V.C.4 provides that if no leases or replacement agreements are made under the preceeding sections:

[e]ach GTOC shall make its interexchange routing and transmission capacity provided by assets subject to Paragraph V.C.2 available to all interexchange carriers on nondiscriminatory terms and conditions, and may expand or modernize (but not replace) such interexchange routing and transmission facilities if it offers to make available such expanded or modernized capacity to all

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[20] *American Telephone & Telegraph Co.*, No. 83-0192, slip op. at 12-13 (D.D.C. filed Apr. 20, 1983).

[21] 47 U.S.C. § 214(a) (1976).

[22] Final Judgment at VC.].

[23] CIS, at 18.

[24] *See Micronesian Telecommunications Corporation*, Mineo No. 002455 [released Aug. 5, 1981] (Memorandum Opinion, Order, and Authorization & Certificate issued by Chief, International Facilities Authorization and Licensing Division, Common Carrier Bureau, Federal Communications Commission).

[25] The confusion over this point is magnified by the very imprecise definition of a GTOC under Section II.K of the Final Judgment. That provision defines a GTOC to include "the corporations listed in Appendix of th[e] Final Judgment, . . . and *any entity directly or indirectly owned or controlled by a GTOC*, or affiliated through common ownership, but shall not include GTE Corporation or any affiliate of GTE not having an ownership interest in a GTOC." Final Judgment at II.K (emphasis added). It is not clear whether or not MTC would be included within this definition.

[26] Final Judgment at V.C.1.

[27] CIS, at 18.

[28] Final Judgment at V.C.2. This provision also includes certain interexchange facilities in a GTOC construction program.

[29] Final Judgment at V.C.3.

[30] The definition of the Bell Operating Companies ("BOCs"), however, is broadly defined to include the 22 operating companies listed in Appendix C, "their successors and assigns and any entity directly or indirectly owned or controlled by a BOC *or affiliated through common ownership*." Final Judgment, at II.D. (emphasis added). Since the AT&T Long Lines Department is "affiliated through common ownership" with the operating companies listed in Appendix C, the broad definition of "BOC" contained in the Final Judgment could be construed to include the AT&T Long Lines Department.

[31] CIS, at 19.

[32] In the State's view, the United States Department of Justice should clarify this issue

interexchange carriers on non-discriminatory terms and conditions.[33]
This section appears to permit HTC to act as a "carrier's carrier" in which its interexchange facilities are made available to all interexchange carriers on a nondiscriminatory basis.

In addition to the alternatives that are listed in Section V. of the Final Judgment, GTE has two other options with respect to HTC's interexchange facilities. First, GTE could sell HTC's interstate interexchange facilities.

Second, GTR possibly can consolidate the interexchange operations of HTC into GTE Sprint and GTE Spacenet. Although GTE is clearly barred from directly effectuating such a transfer,[34] the Final Judgment possibly would not bare GTE from transferring HTC's interexchange facilities to the parent corporation, establishing a separate affiliate which provides only interexchange facilities, and consolidating this entity with GTE Sprint.[35] This possibility must be clarified.

Therefore, the Final Judgment provides the defendant in this proceeding, GTE, with a number of options with respect to the joint interexchange facilities owned by HTC. These options include, *inter alia*, entering a leasing or perhaps other arrangement with AT&T, making these facilities available to other carriers on a nondiscriminatory basis, selling the assets, and consolidating the assets with GTE Sprint or GTE Spacenet. The impact on competition is very different depending upon the option which the defendant selects. For example, entering a lease arrangement with AT&T or making the facilities available to other carriers on a nondiscriminatory basis may not have an anticompetitive impact; it may result in new competitors in the Hawaii-Mainland marketplace as a substitute for the elimination of the independence of SPCC. The consolidation of HTC's interexchange facilities with those of GTE Sprint, in contrast, would significantly lessen competition in that market. Prior to the acquisition, HTC and SPCC directly competed in the Hawaii-Mainland interexchange services market. If GTE selects this option, the acquisition will result in the elimination of one of these competitors without any alternative mechanism to substitute for this reduced competition. In short, until more information is provided on the disposition of HTC's facilities, if any, and the carrier or carriers which will utilize these facilities to provide Hawaii-Mainland services, a reasoned assessment of the impact of the acquisition on the public interest—either in terms of its competitive impact or its affect on local exchange service—is impossible.

[33] Final Judgment at V.C.4.

[34] Section IV.A.6 provides that "[t]he GTOCs and the acquired entities shall not jointly provide telecommunications or information services or jointly own the assets used to provide such services." *Id.* at IV.A.6.

[35] *See id.* at IV.D.1.

III. The Court Should Either Reject the Final Judgment or Defer Consideration Until It Obtains All Relevant Information

A. *No Decision Approving the Acquisition Should Be Made Until Conclusion of All FCC Proceedings*

Even on the limited information available, it is clear that the Final Judgment cannot be implemented without Federal Communications Commission action. For example, as noted above, if HTC can no longer provide Hawaii-Mainland services, HTC will have to seek authorization under Section 214 of the Communications Act to terminate that service. Similarly, Section 214 authorization would be required to implement most, if not all, of GTE's options concerning HTC's interexchange facilities.

Unless the Court rejects the Final Judgment outright, it must defer consideration until both the terms of the agreement are clarified and the requisite regulatory authority to implement its terms is obtained or denied.[36] This is not a situation where the Court should approve the acquisition and leave implementation "details" to the requisite regulatory authority. The issues which remain unresolved go to the heart of the public interest determination. Specifically, the Court cannot adequately assess the competitive impact of the acquisition or other matters integral to the public interest if it is not given definitive information concerning whether HTC, the dominant interstate telephone carrier serving Hawaii, will continue to provide intersate services; which carrier or carriers, if any, will replace HTC; or which entity or entities will control the dominant Hawaii-Mainland telecommunications facilities. If HTC is not to provide interexchange services, it is also critical to ascertain which carriers will provide each of the services to each of the domestic points currently served by HTC.[37]

B. *Additional Information Is Needed Concerning the Separation of Interexchange and Local Facilities*

If there is to be a separation of HTC's interexchange and exchange facilities,[38] additional questions arise concerning the division of these facilities. There are a number of facilities currently used to provide both exchange and interexchange services. These include land, buildings, cables, central office switching facilities, warehouses, underground conduits, manholes, toll terminals, *etc.*[39] The division of these assets could affect the quality, cost, and availability of local service. For example, in *United States v. American Telephone & Telegraph Co.*, the Court stated it would ensure that: the division of AT&T's assets will not leave the Operating Companies with outdated equipment for the access of the smaller interexchange carriers while AT&T retains the most modern, the most efficient switches and other facilities.[40]
Similarly, it is important, with respect to a division of assets, that the operating company not "be left with the expense of stranded capacity."[41]

The Final Judgment does not provide the safeguards that were presented in *United States v. American Telephone & Telegraph Company*. First, as the Court stated in *United States v. American Telephone & Telegraph Co.*,

> Perhaps the most important guarantee against improper manipulation is the one included in the proposed decree itself that assets will be divided according to the function they perform.[42]

With respect to multifunction facilities the Court applied a "predominant use test."[43] There are no comparable provisions in the Final Judgment.

Second, in *United States v. American Telephone & Telegraph Company*, the Court had the benefit of the views of the operating companies "independent of pressure from AT&T . . . ."[44] Although these operating companies were owned by AT&T, the impending divestiture made it possible for the Court to solicit the independent views of these operating companies on the division of assets. In this proceeding, in contrast, HTC is and will remain a wholly-owned subsidiary of GTE. As the letters attached to these Comments attest, HTC will not express any views concerning the division of assets or indeed on any other issue related to the acquisition apart from the views of its parent company. Therefore, a significant party in interest, HTC, will not be heard at all as a separate entity in this proceeding. This Court must establish procedures that provide a surrogate.

Third, in *United States v. American Telephone & Telegraph Co.*,

[36] This Court should not approve this acquisition on the assumption that the necessary authorizations will be obtained. For example, if HTC filed an application under Section 214 of the Communications Act for authority to discontinue its Hawaii-Mainland interexchange service, the Commission has the option to approve or to deny this application. The impact on the public interest will differ depending upon which decision the Commission makes.

[37] HTC and AT&T jointly provide MTS service between Hawaii and the Mainland. If AT&T is to substitute for HTC in the provision of this service, this is a fact which must be ascertained with certainty. AT&T's current MTS tariff does not include service between Hawaii and domestic points such as Alaska, Puerto Rico and the Virgin Islands. If HTC is not to provide interexchange services to these points, information needs to be provided as to which carrier or carriers will provide this service. A similar situation exists with respect to MTS service between Hawaii and the Northern Mariana Islands. *See* II.B. *supra*.

[38] Section V.C.1. of the Final Judgment appears to contemplate such a separation.

[39] *See United States v. American Telephone & Telegraph Co.*, 552 F. Supp. at 206.

[40] *United States v. American Telephone & Telegraph Co.*, No. 82-0192, slip op. at 12 (D.D.C. Apr. 20, 1983).

[41] *United States v. American Telephone & Telegraph Co.*, No. 82-0192, slip op. at 11 (D.D.C. July 8, 1983).

[42] *United States v. American Telephone & Telegraph Co.*, 552 F. Supp. at 208.

[43] *Id.* at 206-07.

[44] *United States v. American Telephone & Telegraph Company*, No. 82-0192, slip op. at 9-10 (D.D.C. July 6, 1983).

[t]he Department of Justice . . . invited federal and state regulatory bodies as well as AT&T's competitors and other interested persons to examine the distribution of assets provided for in the plan of reorganization.[45] In the State's view, it is important that GTE be required to provide a Plan of Reorganization and that a similar invitation for the examination of the planned utilization of HTC's interexchange facilities be provided in this proceeding. In addition, particularly in light of the nonparticipation of HTC, the Court should be given specific information on any distribution of assets before it renders a decision in this case.

IV. If the Court Approves the Acquisition, at the Very Minimum, it Should Impose the Conditions Proposed by GTE and Accepted by the Commission Relative to Hawaii

The Federal Communications Commission, in conditionally approving this acquisition, recognized "the special situation in the State of Hawaii" [46] justified the imposition of specific safeguards. Indeed, it is indisputable that prior to the acquisition, SPCC and HTC were in direct competition in the Hawaii-Mainland telephone service market and the acquisition eliminated that competition. The Commission noted that even GTE "conced[ed] in effect that the unique circumstances in Hawaii justify special remedial treatment" [47] and accepted what were in effect the conditions proposed by GTE.[48]

The Court, after it obtains the necessary information to make an informed public interest determination, may find that the imposition of additional conditions are necessary, or it may find that the acquisition is not in the public interest. If the Court determines to approve the acquisition, at the very minimum, it should condition the approval on the conditions relative to Hawaii that were proposed by the defendant and determined by the Commission to further the public interest. These conditions are as follows:

(a) GTE will cause SPCC, SPSC or any present or future subsidiary of SPCC or SPSC, and any successor organization, to include the state of Hawaii in any interexchange telecommunications service offering that is available on the United States Mainland to metropolitan areas equivalent in size to the Honolulu metropolitan area, and such offering shall be included in the same rate structure which applies on the United States Mainland.

(b) GTE will cause SPCC or any successor organization to extend to Hawaii as quickly or as soon as operationally feasible under the same rate structure that applies on the United States Mainland, all the SPRINT services SPCC provides on the United States Mainland at the date of the acquisition. GTE will also cause SPCC or any successor organization to extend to Hawaii as soon as operationally feasible point-to-point private line service under the same rate structure that applies on the United States Mainland. SPCC and any successor organization shall continue to provide all such services under the same rate structure that applies on the United States Mainland as long as such service is available from SPCC or any successor organization to metropolitan areas equivalent in size to Honolulu on the United States Mainland.[49]

V. The Costs of Providing Equal Access Should Not Be Borne by the Local Operating Companies

Another issue which is not resolved by the Final Judgment is how the costs of providing equal access will be recovered. Section V.A of the Final Judgment requires each GTOC to provide to all interexchange carriers and information service providers equal exchange access, information access, and exchange service for such access that is equal in type, quality and price for all interexchange carriers and information service providers.[50]

In *United States v. American Telephone & Telegraph Co.*, the Court noted agreement by all parties that the costs for equal access should "be recovered from the interexchange carriers, rather than through access charges levied on local ratepayers, because the expenditures represent improvements to the long distance network." [50] Yet, it noted that under existing allocation procedures, most of these costs would be recouped through intrastate tariffs.[51] The Court decided that AT&T and not the operating companies should be responsible for any cost of equal access and network configuration above those recovered through access charges.[52]

As the Court emphasized, "it is . . . most important that local rates not be burdened with unnecessary increase." [53] Therefore, the financial burden of providing equal access—which benefits interexchange service—shouldnot be placed upon HTC or the other GTOCs. The State suggests that GTE be made responsible for any costs related to the compliance of the equal access provisions.

Conclusion

The Final Judgment leaves a number of unanswered questions which are essential to an informed decision as to whether or not the acquisition is in the public interest. For example, it is not clear whether HTC is to continue to provide interexchange services after the Final Judgment is approved or whether it is barred from providing these services. If it can continue to provide these services, it is not clear whether or not it is for a limited time frame and if so what that time period is. If the Final Decree absolutely bars HTC from providing such services, no questions are raised concerning potential disruption of existing interexchange telephone service and potential danger to universal exchange service. In addition, there are serious issues concerning the relationship between Final Judgment and the Communications Act. If, HTC is immediately barred from the provision of service, a conflict arises with the Communications Act because the Federal Communications Commission has not certified that the public convenience and necessity require such a discontinuance. If the terms of Final Judgment are not to become effective until after the Commission acts, the Commission would in effect have a veto over a significant provision in the Final Judgment; in such a case, a Commission's decision not to grant the certificate would significantly alter the terms of the settlement.

Other questions also arise concerning the disposition of HTC's interexchange facilities, if in fact a disposition is to take place. The Final Judgment gives the defendant, GTE, a range of options and the public interest ramificaitons and competitive impact vary according to the choice made. In addition, there is no explanation as to how the division of HTC's interexchange and exchange assets are to be divided, if in fact such a division is to take place.

Because so many issues are unresolved, the State is of the view that neither interested parties nor the Court can make an informed judgment on the present record as to whether or not the Final Judgment serves the public interest. The State urges that the following procedures be established before the court acts on this acquisition. First, the Department and GTE should clarify the ambiguities in the terms of the Final Judgment and GTE should describe with particularity what, if anything, are its intentions with respect to HTC's interexchange facilities. Second, no action should be taken until the Commission acts upon any application for Section 214 authority to provide service terminate service and transfer facilities relating to Hawaii that are necessary to carry out the terms of the Decree; third, after these proceedings are concluded, and all the necessary applications obtained or denied, GTE in a Plan of Reorganization should submit precise information on any assets which are to be divided between HTC's exchange and interexchange operations. Fourth, after this information is provided and the requisite regulatory proceedings concluded, the parties should be provided with an opportunity to comment on the merits of the acquisition. At that time, the State for the first time will be in a position to adequately assess whether the acquisition and Final Judgment should be approved, rejected or conditioned including a condition that HTC be divested from GTE.

Respectfully submitted,

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[45] *United States v. American Telephone & Telegraph Co.*, 552 F. Supp. at 208.

[46] *Application of GTE Corporation and Southern Pacific Company for Consent to Transfer Control of Southern Pacific Communications Company and Southern Pacific Satellite Company*, FCC 83-288 (released July 1, 1983) at ¶61.

[47] *Id.* at n. 41.

[48] *Id.* at ¶64.

[49] *Id.* at 31.

[49] Final Judgment at V.A.

[50] *United State v. American Telephone & Telegraph Co.*, No. 82-0192, slip op. at 16 (D.D.C. July 8, 1983).

[51] *Id.*

[52] *Id.* at 18.

[53] *American Telephone & Telegraph Co.*, No. 82-0192, slip op. at 13 (D.D.C. Apr. 20, 1983).

Executive Director, Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawaii
July 15, 1983.

United States of America, Plaintiff, v. *GTE Corporation*, Defendant: Civil Action No. 83-1298.

Comments of State of Michigan and Michigan Public Service Commission

The State of Michigan and the Michigan Public Service Commission, collectively "Michigan", by its counsel, respectfully submits the following comments concerning the proposed consent decree in the above cause pursuant to the Antitrust Procedures and Penalties Act, 115 U.S.C. § 16.

Michigan has a significant interest in this proceeding. General Telephone company of Michigan, one of the fifteen operating companies in the GTE Corporation system to be affected by the proposed Final Judgment, is the second largest provider of telephone service in the State of Michigan and the largest independent telephone company in the State. General Telephone Company of Michigan served some 436,000 main stations in the State as of year-end 1982. The company is regulated by the Michigan Public Service Commission with respect to securities, rates, charges, and conditions of service. These considerations make comments on behalf of Michigan appropriate in this proceeding. Michigan has also participated extensively and been granted intervenor status in the companion divestiture proceeding before this Court involving American Telephone & Telegraph Company in Civil No. 82-0192, Misc. No. 82-0025(PI).

Michigan notes with some curiosity the remedy accepted by the Department of Justice regarding this cause and GTE Corporation's acquisition of the subsidiaries of Southern Pacific Company. Given the pending split of the exchange and exchange access portions from the interexchange portions of the Bell System in the AT&T case, the consolidation of such operations in the subject case would seem to be at odds with the Department's principal theory for the remedy proposed for the Bell System. Nevertheless, Michigan does not oppose entry of the proposed Final Judgment. Michigan requests that the Court specifically approve the proposed designations and affiliations of General Telephone Company of Michigan's exchange areas as specified in the July 5, 1983 submission on that subject. Michigan further reserves its rights and jurisdiction to assure that future developments not specified in the proposed consent decree or other relevant materials do not negatively affect the regulated common carrier offerings of General Telephone Company of Michigan and its ratepayers.

In compliance with the proposed Final Judgment in this case, GTE Corporation on July 5, 1983 filed its proposed exchange area configurations. In that submission, GTE proposed that all General Telephone Company of Michigan exchanges be affiliated with one of the Michigan Bell Local Access and Transport Areas approved by the Court in AT&T's divestiture proceeding, Civil Action No. 82-0192, Misc. No. 82-0025(PI). Approval of these affiliations is in the public interest for several reasons. It would avoid costly, unnecessary network reconfiguration costs, would permit General Telephone Company of Michigan the maximum flexibility in its operations with minimum negative impact, and is consistent with the Court's July 8, 1983 Opinion in the AT&T divestiture proceeding.

The July 5, 1983 Memorandum in Support of GTE Corporation Exchange Area Submission, required to be filed by the proposed Final Judgment, aptly provides reasons for approval of the affiliations in Michigan. Among these considerations are the relatively low population density of most General Telehone Company of Michigan exchanges, the current lack of interest by interexchange carriers in entry into such exchanges, and communities of interest. Network and facility configurations also play a significant role. Approval of the exchange area submission and the affiliations with Michigan Bell's Local Access and Transport Areas requested therein promotes these interests and affords General Telephone Company of Michigan the necessary business freedom to continue its existing operations together with the duties and restrictions contained in the proposed consent decree.

Furthermore, approval of the July 5, 1983 submission and the proposed Michigan associations comports with this Court's actions in the AT&T proceeding. In section VII of the Opinion of July 8, 1983 on "Bell-Independent Traffic," the Court decreed that Bell Operating Company positions on the inter-LATA character of Bell-independent traffic would not be approved over the opposition of the Department of Justice and the States and that the traffic would be deemed intra-LATA for purposes of that decree. The Court stated:

"In a few instances, particularly in Oregon and Washington [and in Michigan], traffic was classified as inter-LATA by the particular Operating Company because it elected not to serve the relatively small Independent area in question.[236]

[236] The Department of Justice as well as the states involved oppose these classifications on the ground that even though the decree cannot impose a requirement that an Operating Company actually provide service to an area which it is permitted to serve, the purpose of the classifications is to define areas which the Operating Companies *May* serve. In that view, the particular traffic should be classified as intra-LATA and it would then be left to the state and federal regulators to determine whether the Operating Companies or any other carriers should be *obligated* to serve particular areas. See Department of Justice Response to Comments, April 4, 1983, at 8; State of Oregon Comments, March 15, 1983, at 3-5. The Court finds the position taken by the Department of Justice in this regard to be correct, since it will best ensure that the decree does not unnecessarily intrude upon the jurisdiction of the regulatory commissions to determine service responsibilities within their jurisdictions. Accordingly, the Operating Company classifications are hereby required to be modified to conform to the Department's position.

* * * * *

[241] In the few instances, such as those discussed in note 236 *supra*, where the Department of Justice and the Operating Companies took different positions with respect to whether particular traffic should be classified as intra-LATA or inter-LATA, the Court agrees with the position of the Department, and the classifications should, accordingly, be modified to conform to that position." Opinion of July 8, 1983, pp 127-128, 130.

Thus, the Court has sought to maximize the freedom of independents such as General Telephone Company of Michigan and avoid possible conflict with regulatory agencies. The same goals are achieved by approving the GTE exchange areas and associations for Michigan.

In Michigan's case, the Court's July 8, 1983 means that, with one exception, all Bell-independent traffic is intra-LATA in nature for purposes of both determining who may carry the traffic and asset transfers.[1] The one exception is Three Rivers-muskegon, which the Department of Justice did not disagree should be inter-LATA for asset transfer purposes only. The July 5, 1983 submission, however, effectively seeks to have all traffic between General Telephone Company of Michigan and Michigan Bell deemed intra-LATA for both purposes, with Alma associated with Michigan Bell's Saginaw LATA. The Court should approve the request, for recent traffic studies indicate that this affiliation has the least likelihood of causing stranded investment both for General Telephone Company of Michigan and Michigan Bell.[2] Negative rate implications for General Telephone Compamy of Michigan subscribers will thereby be avoided.

Beyond the foregoing considerations, the proposed consent decree presents several areas of potential concern to the customers of General Telephone Company of Michigan. For example, the acquisition could cause

[1] Michigan Bell in the February 17, 1983 submission classified as inter-LATA the traffic between itself and independent exchanges that homed on a GTE-owned Class 4 switch, resulting in five nonaffiliated "market areas." The Department of Justice in its April 5, 1983 response, however, submitted that traffic between Michigan Bell and market areas 1, 2, and 3 (Alpena, Alma, and Adrian) should be deemed intra-LATA, with Alma, associated with the Grand Rapids or Lansing LATA. The Court's July 8, 1983 Opinion adopted the Department's view. Michigan had also previously advised the Court in its May 16, 1983 response to the Court's April 20, 1983 Opinion that GTE had changed its position and now, in effect, had agreed with the Department of Justice position.

[2] The request should also be approved as being the consensus position of the companies in Michigan. As indicated in Michigan's March 15, 1983 comments on independent traffic classifications, a proceeding was subsequently held in Michigan to discuss and determine the effect of this issue on Michigan independents with the input of those companies. The result was a general agreement with the position expressed in footnote 236 of the July 8, 1983 Opinion. Thus, all independents in Michigan, through toll homing on GTE switches or otherwise, will be affiliated with Michigan Bell LATAs.

future investment to be concentrated on the service offerings of the acquired entities at the expense of regulated monopoly offerings. The corporate restructuring to transfer certain deregulated operations of General Telephone Company of Michigan to new or other existing subsidiaries could potentially affect its cost of debt. The sharing of certain services via contract or fully distributed cost methodologies has the potential to permit inappropriate cross subsidization. Finally, options for recovery by General Telephone Company of Michigan of its interexchange investment are, of course, not guaranteed. At this time, however, these potential negative impacts do not appear significant enough to require disapproval of the proposed decree. Rather, they may be addressed in the regulatory arena and through necessary and appropriate actions by General Telephone Company of Michigan to secure the best interests of its Michigan subscribers.

Michigan necessarily reserves the right to take such further positions as the facts and circumstances of the proposed consent decree develop more fully.

In sum, Michigan does not oppose entry of the proposed Final Judgment and respectfully urges adoption of the Michigan exchange area designations and classifications associated therewith.

Respectfully submitted,

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Dated: July 15, 1983.

United States of America, Plaintiff, v. *GTE Corporation,* Defendant; Civil Action No. 83-1298.

Comments of MCI Telecommunications Corporation on Proposed Settlement

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Table of Contents

MCI Telecommunications Corporation ("MCI"), by its attorneys, respectfully submits these comments pursuant to section 16(b), (d) and (f)(4) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), (d), (f)(4).

I. Introduction

The landmark resolution of *United States* v. *AT&T* has set the stage for genuine competition in the telephone industry. By requiring the nation's largest long distance carrier to divest the largest group of local telephone companies and by restricting those local companies to local exchange business, the Modified Final Judgment has markedly reduced the prospect of anticompetitive cross subsidization and abuse of bottleneck power over essential access facilities.

A significant reversal of those benefits is now threatened by GTE's acquisition of Southern Pacific Communications Company ("SPCC"). The second largest local exchange company would suddenly own the second largest non-AT&T long distance company. Once again the specter of interconnection discrimination and other anticompetitive practices is raised. What was taken apart in *United States* v. *AT&T* would be rebuilt in another form.

Common ownership by GTE of local and long distance telephone companies presents the same problems as have occurred with AT&T and the BOCs. The settlement proposed by the parties in this action, however, is much different than in *United States* v. *AT&T*. Instead of requiring divestiture, acquisition would be sanctioned.

Harm to competition from this acquisition is virtually inevitable due to the existence of structural bottleneck monopolies and to the demonstrated lack of effective or efficient means to prevent the abuse of that bottleneck power.

GTE's interconnection conduct and other actions relating to its own monopoly franchises have been as harmful and unlawful as AT&T's conduct with the BOCs. Furthermore, GTE and AT&T have long combined in a cartel controlling the long distance market. To enable a better informed evaluation of the proposed settlement here, MCI is submitting with its Comments an Appendix which discribes relevant GTE's conduct in this industry. Those materials which include sworn statements by MCI and GTE personnel together with GTE documents, demonstrate the reality of the problems threatened by this acquisition.

MCI welcomes vigorous competition from SPCC and has no objection if SPCC is sold—but not to a bottleneck monopolist engaged in a powerful cartel.

The $500 million premium being paid by GTE for SPCC shows the anticompetitive potential of this transaction. This nation's antitrust laws were not enacted to allow a fox to buy its way into the henhouse. The public interest is served by keeping the fox out of the henhouse, not by trying ineffectively to tie the fox's jaws and hoping that the rope holds at midnight when nobody is around.

II. Background Information

A. GTE Corporation: The Entrenched Monopoly Exchange Carrier

GTE is a $22 billion company which owns and operates a vertically-integrated telecommunications system. (GTE Corporation Annual Report 1982 at 8.) GTE's exchange telephone operations produced 94% of GTE's $2.3 billion consolidated operating income in 1982. (*Id.* at 27-29.)

Through its 17 domestic telephone companies, GTE provides local telephone service on a monopoly basis to 16 million telephones in 31 states.[1] GTE provides local exchange service to 8.73% of all telephones in the United States and 46% of all non-Bell telephones.[2]

Note.—In 1981, local telephone service was provided as follows:

Telephone company	Area		Telephones		Density (phones/square miles)
	Total square miles	Percent of total	Total number	Percent of total	
Bell	1,134,619	31.36	145,876,350	80.85	128.57
GTE	250,774	6.93	15,756,400	8.73	62.83
United	116,674	3.22	4,697,467,468	2.60	40.26
Continental	237,681	6.57	3,125,800	1.73	13.15
Central	30,549	0.84	1,806,600	1.00	59.14

[1] Outside the United States, GTE has telephone companies serving over 2 million phones in British Columbia and Quebec, and more than 165,000 phones in the Dominican Republic. (GTE 1981 Annual Report at 22; Statistical Supplement to 1981 Annual Report at 1.)

[2] See two column table above

Telephone company	Area		Telephones		Density (phones/square miles)
	Total square miles	Percent of total	Total number	Percent of total	
Mid-continental	25,966	0.72	1,094,850	0.61	42.16
Other independents	940,383	25.99	8,066,555	4.47	8.58
Undesignated areas (inc. water)	881,759	24.37	0	0	0
Total	3,618,405	100.00	180,424,023	100.00	49.86

(NTIA Report No. 82-87, Telephone Areas Serviced by Bell and Independent Companies in the United States, Feb. 1982, Table 1 at 3.)

GTE companies serve numerous cities with more than 100,000 telephones each—including Tampa, St. Petersburg, Clearwater and Sarasota, Florida; Ft. Wayne, Indiana; Erie, Pennsylvania; Lexington, Kentucky; and Covina, Downey, Huntington Beach, Long Beach, Ontario, Orange, Oxnard, Pomona, Redlands, Redondo, San Bernardino, San Fernando, Santa Barbara, Santa Monica, Thousand Oaks, West Los Angeles, Westminster and Whittier, California. (Telephony's 1982–83 Directory at 361 et seq.) Many GTE locations are served by SPCC or MCI.[3]

General Telephone of California is the largest GTE operating company, serving over 4 million telephones in 74 exchanges (an average of more than 56,000 telephones per exchange). General Telephone of Florida is the second largest company (also with an average of more than 50,000 telephones per exchange). California and Florida together account for approximately one-third of total GTE telephone company revenues. (*See* USITA 1982 Annual Statistical Volume II at 1; Appendix Tab 13 lists the assets and revenues of each GTE domestic telephone company.)

Eighty-three percent of GTE's telephone investment (excluding CPE) is in urban areas. (Appendix Tab 21, Potential Impact of AT&T/DOJ Settlement on GTE's Intercity and Exchange Networks, dated March 9, 1982, at 0662, 0664.)[4] Fifty-two percent of GTE's subscribers are served by just 11% of GTE's central offices. (Appendix Tab 26, GTE Basic Regulated Network Business Plan, dated July 16, 1982, at 6482.)

In 1982, GTE's subscribers made over 2.25 billion long distance calls and GTE's telephone companies received over $4.3 billion, or 56% of their total operating revenues, from providing switching and local interconnections to intercity carriers. (GTE Annual Report 1982 at 27.)

In 1982, GTE had 151 Class 4 toll switches and eight Class 3 toll switches used jointly with AT&T for long distance service under their "settlement" agreements. (Appendix Tab 26, GTE Basic Regulated Network Business Plan, dated July 16, 1982, at 6697.) GTE's 1980 intercity plant investments, including switching and transmission facilities, totalled $2.4 billion, exchange plant investments were $10.9 billion and CPE investments came to $2.3 billion. (Appendix Tab 21, Potential Impact of AT&T/DOJ Settlement on GTE's Intercity and Exchange Networks, dated March 9, 1982, at 0666.)

GTE also manufactures telephone equipment. GTE's Communications Products group produces a wide range of communications equipment, inluding central office switching equipment, PBX equipment, transmission equipment and telephones. The Communications Products group had 1982 sales of $2.5 billion and operating income of $151 million. (GTE Annual Report 1982 at 29.) Automatic Electric and Lenkurt, the primary companies in the Communications Products group, had 1981 sales of $1.1 billion (80% of which were to GTE domestic telephone companies) and net income of $12.5 million. (GTE Date on Manufacturing, Supply, Directory and Service Affiliates for the Year 1981 at 63–65.) Automatic Electric and Lenkurt manufactured 2.7 million telephones, central office switches accommodating 600,000 lines, and carrier equipment for 330,000 channels. (*Id.* at 74.) In 1969, AE-Lenkurt sales accounted for 37% of non-Bell telephone equipment purchases and over 90% of GTE operating company equipment purchases. *ITT* v. *GTE*, 449 F. Supp. 1158, 1182, 1190 (D. Hawaii 1978).

GTE Service Corporation provides legal, financial, personnel, administrative, advertising and other staff assistance to GTE companies. In 1981, GTE Service billed GTE companies $192 million, of which $110 million was billled to GTE's domestic telephone companies. (GTE Data on Manufacturing, Supply, Directory and Service Affiliates for the Year 1981 at 53.)

GTE Laboratories conducts basic and applied research for GTE companies. In 1981, GTE Labs allocated $44 million in research expenses to GTE domestic telephone compaines. (*Id.* at 62.)

GTE Data Services provides data processing services to GTE telephone companies and other organizations. Data Services had 1981 operating revenues of $175 million, $153 million of which was contributed by GTE domestic telephone companies. (*Id.* at 105.)

GTE Directories provides telephone directory service, including sales of yellow page advertising. Directory advertising revenues from GTE domestic telephone companies totalled $267 million in 1981. (*Id.* at 92.)

Thus, in 1981, six GTE subsidiaries received more than $1.37 billion in transfer payments from GTE's domestic telephone companies. In contrast, GTE's 1981 consolidated net income was $.72 billion. (GTE Corporation Annual Report 1982 at 27.)

B. SPCC: The New Interexchange Carrier

SPCC, which began service in late 1973, is the second largest non-ATT intercity carrier. It accounts for approximately 20 percent of all non-Bell long distance telephone calls. SPCC serves more than 535,000 users in 45 states by handling more then 90,000 long distance calls each business day. (Southern Pacific Company 1982 Annual Report at 14.) It operates a $477 million nationwide telecommunication network including approximately 50 million miles of intercity channles. (*Id.*) SPCC's service is or shortly will be available in more than 300 metropolitan areas. (Some Straight Talk About Sprint; Update From Sprint.)

During 1982, SPCC's customer base more than doubled and SPCC increased its capital investment by more than $152 million. (Southern Pacific Company 1982 Annual Report at 14, 27.) SPCC added over 7 million circuit miles in 1981 by opening a route from Washington, D.C. through Atlanta and New Orleans to Houston. (Southern Pacific Company 1981 and Annual Report at 12.) Its 1982 revenues were $393 million and its operating income totalled $104 million. (Southern Pacific Company 1982 Annual Report at 14.)

C. Overview of the Telecommunications Industry

The $35 billion intercity telecommunications market is one of the most highly concentrated industries in the United States. Approximately 95% of all intercity voice-grade traffic is handled by AT&T. [5] The percentage of intrastate long distance traffic carried by AT&T is even higher. The historical basis for this high concentration provides a useful reference for identifying some of the forces which may shape the industry during the remainder of this century.

[3] GTE cities served by SPCC include Durham, N.C.; Erie, Pa.; Ft. Wayne, Ind.; Lexington, Ky.; York, Pa.; Tampa, Fla.; and Ontario, San Bernardino and Santa Barbara, Cal. (SPCC FCC Tariff No. 9 at 14–15G.) SPCC has stated that it expects to serve additional GTE cities shortly, such as Oxnard and Laguna Beach, Cal. (SPCC Update from Sprint at 1.)

GTE cities served by MCI include Durham; Erie; Ft. Wayne; Lexington; York; Tampa; Ontario; and Santa Barbara; as well as Clearwater, Fla.; Johnstown, Pal.; San Angelo, Tex.; Texarkana, Tex.; and Ventura, Cal. (MCI FCC Tariff No. 1 at 36.1; *see also* Handbook of Intercity Telecommunications Rates and Services (Economics and Technology, Inc. 1982) at Bl. 022, Table 1). MCI also expects to open terminals in GTE cities such as Long Beach and San Bernardino, California; Sarasota, Florida; LaFayette and Terre Haute, Ind.; Bloomington, Ill.; Muskegon, Mich., and Columbia, Mo.

[4] All GTE documents in the Appendix to these Comments bear a stamped number. For ease of reference, pages in those documents are referred to by the last four digits of the numbers appearing thereon.

[5] Voice-grade toll and private line service is provided primarily by five carriers:

Carrier	Revenue	Percent
AT&T	$33,256M	95
MCI	1,073M	3
SPCC	393M	1
USTS	126M	–
Western Union	50M	–

Sources: 1982 AT&T Annual Report at 30; MCI 1983 Annual Report at 18; Southern Pacific 1982 Annual Report at 14; United States Transmission Systems, Inc. 1982 FCC Form P at 9; Western Union Corp. 1982 Annual Report at 17, 20. The Western Union figures are adjusted to exclude other revenue.

Formation of the AT&T Monopoly

Initially, the only significant form of long distance communications in the United States was by telegraph, and the dominant telegraph carrier was Western Union Telegraph Company. (Federal Communications Commission, *Investigation of the Telephone Industry in the United States*, H.R. Doc. 340, 76th Cong., 1st Sess. 27 (1939), Ex. 1362A, at 33 [hereinafter cited as *"Investigation"*].) In settlement of a patent action brought by AT&T, *American Bell Tel. Co.* v. *Dowd* (C.C.D. Mass., filed Sept. 12, 1878), Western Union agreed to stay out of the telephone business. (*Investigation*, at 123–24.) AT&T subsequently eliminated virtually all other telephone competitors through more than 600 patent infringement actions. (*Investigations*, at 125.)

Following the expiration of the Bell patents in 1893 and 1984, AT&T refused to allow independents to interconnect with any AT&T or to share any facilities, such as underground conduit in metropolitan areas, owned or used by AT&T. (*Investigation*, at 136–37.)

By World War I, AT&T had virtually completed its acquisition of hundreds of independents in the most profitable areas of the country. AT&T had also constructed a nationwide long distance monopoly. With the adverse conditions of the Depression, this situation continued unchanged until World War II.

Formation of The Cartel

Microwave technology, developed by the U.S. Army Signal Corps during World War II (*See Economic Implications and Interrelationships Arising From Policies and Practices Relating to Customers Interconnection Jurisdictional Separation and rate Structures*, 61 F.C.C.2d 766, 779–80 (1976)), created the first competitive threat to AT&T's monopoly in intercity communications since the turn of the century. Microwave allowed intercity telecommunications to be carried more cheaply and efficiently than by cable. Because AT&T would have to construct microwave facilities just like anyone else, competition was again economically feasible. *See United States* v. *AT&T*, 524 F. Supp. 1336, 1353 & n. 71 (D.D.C. 1981).

AT&T responded to regulatory pressures from the FCC in the 1940s by unilaterally transferring a significant amount of costs from the intrastate rate bases of local telephone companies to AT&T's interstate rate base. R. Gabel, *Development of Separation Principles in the Telephone Industry*, 48, 50–51 (1967). The effect of AT&T's transfer of local exchange costs to the interstate rate base was to increase settlement payments to local telephone companies and to make long distance competition less attractive to potential entrants. Despite the availability of low-cost microwave technology, no independent telephone company sought to enter the long distance market and compete with AT&T.

In October 1951, AT&T and the independents began to put in place a new type of settlement plan. The result of the plan was to transfer $104 million from intrastate to interstate rate bases. (*Telecommunications Reports*, November 26, 1951, at 6.) This was accomplished by assigning to AT&T's interstate rate base an amount equal to *180 percent* of the costs representing AT&T's interstate usage of local exchange subscriber line facilities. (*United States* v. *AT&T*, written testimony of Charles R. Jones, at 9 & att. 6–7 (filed Nov. 23, 1981).)

Between 1952 and 1970, the Separations Manual underwent several additional revisions each time assigning still more intrastate costs to the interstate rate base. The 1970 "Ozark Plan" assigned 330% of usage based local costs to interstate.[6]

AT&T was paying the independents to stay out of the long distance market. The independents could obtain higher profits by confining themselves to local service and accepting settlement payments equal to more than 300% of costs than by competing with AT&T and risking the loss of inflated settlement payments.

As settlement payments were growing, the cartel was also enhanced by the concentration of non-Bell local exchange business in the hands of five independents.[7] For example, GTE, the largest independent, increased its market share four-fold.

	1935 (percent)	1969 (percent)
GTE share of:		
Independent telephones	12	46
Independent revenues	12	49
Independent plant investment	11	47

ITT v. *GTE*, 449 F.Supp. 1158, 1197–99 (D. Hawaii 1978).

For 30 years after the advent of inexpensive microwave transmission, not one independent sought to enter the long distance market. Despite increasing transmission economies, AT&T's interstate rates stopped declining and bagan increasing. The cartel was complete—AT&T was reaping monopoly profits in the long distance market and dividing them with its non-entering potential competitors. Far from impeding the cartel, state and federal regulators accepted the settlements process by which the cartel was maintained.

GTE's role in resisting competition

The first new competitor to enter the long distance market was not an independent telephone company. It was MCI, a start-up company using microwave transmission technology. *Microwave Communications, Inc.*, 18 F.C.C. 2d 953 (1969). Fearful of long distance competition, AT&T did, and continues to, deny MCI and other competitors equal local interconnections. *Bell Telephone Co.*, v. *FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975); *MCI* v. *FCC*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978); *MCI* v. *AT&T* 1982–83 Trade Cases ¶ 65,137 (7th Cir. 1983) (*"MCI I"*) *petitions for cert. filed* July 11, 1983; *United States* v. *AT&T*, 524 F. Supp. 1336 (D.D.C. 1981); and 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983).

Fearful of the potential loss of their lucrative settlements payments, GTE and other independents also did, and continue to, deny MCI equal local interconnection.[8] (See *MCI* v. *AT&T et al.*, No. 79–1182 (D.D.C.) (*"MCI II"*).)

GTE has refused and continues to refuse to provide MCI with interconnections equal to those provided to AT&T. There are numerous ways in which the interconnection arrangements provided to MCI are critically inferior: (1) GTE provides AT&T with "trunk side" interconnections for long-distance communications while providing MCI with inferior "line-side" interconnections. (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶¶3–4.) Line-side interconnections result in a lower level of transmission quality that damages MCI's relations with its customers and places MCI at a substantial competitive disadvantage to AT&T. (*Id.*) (2) GTE's customers with rotary dial telephones—a substantial majority—cannot use MCI's service without purchasing special tone signaling equipment. (*Id.* at ¶8.) In contrast, GTE customers with rotary dial telephones can use AT&T's long distance service without any special tone signaling equipment. This limitation on MCI greatly restricts the market MCI can serve.[9] (*Id.*) (3) Those customers which MCI can serve must make a separate local telephone call using the line-side connections to gain access to MCI's long-distance service instead of being able to dial a simple single-digit access number as AT&T's users do. This not only inconveniences MCI's customers but can cause them to incur additional local charges (which GTE collects) not incurred by AT&T's customers. (*Id.*) (4) GTE refuses to provide automatic number identification ("ANI") to MCI but does provide it to AT&T. Consequently, unlike AT&T's customers, MCI's customers must identify themselves to

[6] Source: Written testimony of Charles Jones, at 9 & Att. 6 (filed Nov. 23, 1981) *United States* v. *AT&T*.

[7] See page 4 n. *, *supra*.

[8] The following table illustrates the importance to GTE of its toll settlement revenues.

Year	GTE		
	Toll settlement revenues	Net income	Net income less toll settlements
1978	$2.427B	$.497B	($1.930B)
1979	2.857B	.559B	($2.298B)
1980	3.303B	.583B	($2.720B)
1981	3.893B	.716B	($3.177B)
1982	4.365B	.843B	($3.522B)

(GTE Corporation Annual Report 1982 at 27.)

[9] GTE executives understood the effect of restricting MCI to users with touch-tone telephones: "Touch calling capability is critical (only 45% have it.)" (Appendix Tab 17, Executive Review of GTE OCC MTS Business Plan Status, dated May 25, 1982 at 6089; see also Appendix Tab 26, GTE Basic Regulated Network Business Plan, dated July 16, 1982 at 6636.)

MCI by dialing an extra 5 or 7 digit authorization code. This too inconveniences MCI's customers, and also makes possible fraudulent misuse of authorization codes. MCI's need to police this misuse and reduce its losses is expensive and harms its relations with its legitimate customers. (*Id.*) (5) GTE refuses to provide MCI "answer supervision" as it does for AT&T. As a result, MCI cannot determine with certainty if or when a customer's call has been answered. MCI must incur extra costs for equipment which approximates this function. (*Id.*) (6) GTE often refuses to participate in joint trouble reporting or joint testing the MCI. (*Id.*) The result is that MCI must devote more time, people and equipment to testing and yet receive less accurate results.

GTE has had the technological capability to provide equal interconnection arrangements to MCI and other intercity carriers for many years in its local franchise areas. Yet GTE has steadfastly maintained an explicit corporate policy of denying MCI interconnections which it readily provides to AT&T and which smaller independent local telephone companies readily provide to MCI. MCI has frequently requested equal interconnections from GTE, offering to pay reasonable charges based on the cost of the interconnections. (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 10; Appendix Tab 3, Affidavit of Richard Q. Allen at ¶ 14.) GTE has explicitly responded that as a matter of policy it is unwilling to provide equal interconnection features such as rotary dial access, single or reduced digit access without a local call, ANI, answer supervision and joint testing.[10] (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 10; *see also* Appendix Tab 3, Affidavit of Richard Q. Allen at ¶ 15.)

High level GTE employees have admitted in depositions taken by the United States that OCCs, such as MCI, have "been quite consistent from the beginning" in requesting from GTE "a better arrangement, access, if you will to the network." (Appendix Tab 10, Excerpts from Deposition of William R. Hampton at 61–62.) GTE personnel have also testified that for as long as eight years GTE could have provided the OCCs with equal access features such as rotary dialing, "10XX" access, automatic number identification and toll quality trunk lines. (Appendix Tab 9, Excerpts from Deposition of William E. Starkey at 98–99, 104, 107.)

Independent telephone companies other than GTE readily provide MCI with equal exchange access. For example, subscribers of Northwest Iowa Telephone Company can use MCI's long distance service by dialing a one-digit number from any telephone, rotary dial or touch tone, and then dialing the area code and telephone number. No local call is required. The customer's identity is automatically made known to MCI through ANI. Answer supervision automatically alerts MCI when the person called answers the telephone. The interconnections between Northwest Iowa and MCI are high-quality four-wire trunks. MCI has located its terminal facility on Northwest Iowa's premises and calls which originate and terminate in Northwest Iowa's exchange areas are transmitted by microwave directly to MCI's network. If problems arise, the customer can at any time contact Northwest Iowa which checks its own lines and jointly tests lines with MCI whenever that is necessary. Using information such as ANI and answer supervision, MCI automatically calculates the customer's long distance charges and transmits that data to Northwest Iowa which includes the billing on the customer's regular monthly invoice. Northwest Iowa provides the same interconnections and assistance to AT&T. (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 5.)

Sugar land Telephone Company (Texas) provides essentially the same interconnections and assistance to MCI as does Northwest Iowa. (*Id.* at ¶ 6.) The same interconnections and assistance are provided by Sugar Land to AT&T. (Appendix Tab 2, Affidavit of Robert C. Brown, III at ¶ 10.) The switch used by Sugar Land to provide trunk-side interconnections to MCI is a 1–EAX switch manufactured by GTE's subsidiary Automatic Electric. (*Id.* at ¶ 4.) Under a purchase order from Sugar Land, Automatic Electric made the changes to the switch's software required to interconnect MCI's long-distance service. (*Id.* at ¶ 5.) The changes cost less than $14,000 and required 37 man-hours of work by Automatic Electric. (*Id.*) Yet GTE has refused to make these simple changes in identical switches in its own territory. (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 10; Appendix Tab 9, Excerpts from Deposition of William E. Starkey at 112–13.) Indeed, GTE has specifically stated in meetings with MCI representatives that GTE is not interested in the types of agreements MCI has with Northwest Iowa and Sugar Land Telephone Companies. (Appendix Tab 3, Affidavit of Richard Q. Allen at ¶ 15.)

Second, GTE actively sabotages in subtle but effective ways MCI's efforts to compete vigorously in the long-distance telecommunications market. For instance, GTE routinely causes critical delays, sometimes by many months past the due dates *established by GTE itself*, in providing even the lower-quality interconnections it makes available to MCI. (Appendix Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 11.) Over 85% of the 348 GTE dedicated circuits ordered by MCI's Los Angeles office have been late. (Appendix Tab 6, Affidavit of Penny J. Kubitsky at ¶ 4.) Sixty-nine percent of the 148 GTE ENFIA circuits ordered by MCI's Santa Ana, California office also have been overdue. (Appendix Tab 7, Affidavit of Gaile A. Wixson at ¶ 4.) Fifty-two percent of all GTE interconnections ordered by MCI's Dallas terminal have been delayed. (Appendix Tab 3, Affidavit of Richard Q. Allen at ¶ 3.) For some cities, such as Byran/College Station, Texas, GTE has never provided an interconnection on time. (Appendix Tab 4, Affidavit of Gary Mendel at ¶ 4.)

In addition to inferior interconnection quality and interconnection delays, GTE inadequately services and repairs existing MCI circuits. GTE interconnections to Rockwell International, in Seal Beach, California, have failed to function on at least 30 occasions during the past two years. GTE has never offered a reasonable explanation for the disruption in service to this major customer of MCI. (Appendix Tab 8, Affidavit of Buddie J. Aubrey at ¶¶ 4 and 7.) GTE also has arbitrarily attempted to change the local access numbers to MCI's Execunet service, annoying many MCI customers. (Appendix Tab 5, Affidavit of Laurie Smith at ¶¶ 3–8.)

GTE's opposition to competition has not been limited to its relations with MCI. The FCC recently has found: "GTE has never entered a service market and competed with AT&T. GTE's history has primarily been one of cooperation with AT&T and participation in telephone industry solutions." *GTE-Telenet Merger*, 72 F.C.C.2d 111, 156 (1979). In its 1979 Strategic Plan, GTE frankly espoused a policy to "pursue [an] active program of acquisition or joint ventures that create the bargaining chips" to influence AT&T to provide service jointly. (*Id.* at 119.)

In 1972, GTE sought authority from the Federal Communications Commission to establish its own satellite communications system through its GTE Satellite Corporation ("GSAT") subsidiary. Earlier, GTE had unsuccessfully attempted to join AT&T in AT&T's own satellite venture. In its application to the Commission for an independent license, GTE represented that it would compete vigorously with AT&T if it were granted a license. Desiring to promote exactly this sort of competition, the Commission granted a license to GTE. Shortly thereafer, GTE abandoned its independent satellite system plans and announced that it had entered into a joint venture arrangement with AT&T to provide satellite service.

The Commission investigated the reasons for GTE's choice to abandon its independent system. *In re GTE Satellite Corp.*, 49 F.C.C. 2d 42 (1974). Judge Miller found that "AT&T did not coerce GSAT into abandoning its separate system proposal. In fact, if anything the converse is true." *In re GTE Satellite Corp.*, 57 F.C.C. 2d 153 (April 4, 1975), *adopted and aff'd*, 57 F.C.C. 2d 147 (Dec. 16, 1975). Relying upon the testimony of a GSAT officer, Judge Miller found that GTE knew six months before its authorization was granted that it did not intend to construct a separate system. 57 F.C.C. 2d at 172. Judge Miller noted that a March 1973 GTE memo created the suspicion that GSAT even then never intended to construct a totally separate GSAT system and that it wanted a grant of its original proposal only for the purposes of negotiating a joint proposal with AT&T. Judge Miller commented, 57 F.C.C. 2d at 176.

[T]he record evidence suggests that at least six months before it received its separate system authorization, GSAT knew it was not going to build a separate system. It never informed the Commision of that fact. But it knew it. The record suggests that as early as March 9, 1973, GSAT's only motive in pursuing its separate system authorization was to obtain the necessary leverage to induce AT&T to abandon its (AT&T's)

[10] SPCC bases its recent antitrust action against AT&T and the BOCs, in part, upon AT&T's denial of "access to SPCC's system from ordinary rotary dial telephones, access without the need for a separate local telephone call, and answer supervision." Complaint ¶ 20a, *SPCC* v. *AT&T*, No. C 83–94 TEH (N.D.Cal. filed Jan. 7, 1983.) SPCC's antitrust action was filed after the acquisition agreement with GTE and it did not name GTE as a defendant.

separate system and enter into a *combined* satellite system with it. Stated another way, GSAT may have been using the Commission's processes as a tool to secure a favorable satellite agreement with AT&T (emphasis in original).

The FCC recently authorized limited entry by carriers to offer local "cellular" radio telephone service. In each metropolitan area, one authorizaation is allocated to a local wireline telephone company. On June 7, 1982, GTE Mobilnet announced its plans jointly to provide service with AT&T's Advanced Mobile Phone Service (AMPS) in many of the largest metropolitan areas in the country. GTE will operate the systems in seven markets including Cleveland, Houston, Indianapolis, Portland, San Francisco, San Jose and Tampa. (GTE-Mobilnet/AMPS June 7, 1982 Agreement at 3–4; GTE Corporation Annual Report 1982 at 3, 8.) The percentages of ownership allocated to GTE Mobilnet and AMPS vary in different cities. The June 7, 1982 agreement contains specific percentage allocations for GTE Mobilnet and AMPS for several cities. For example, in Atlanta, AMPS will have a 79% interest, while GTE has a 21% interest; in San Francisco AMPS will have a 49% interest, while GTE Mobilnet will have a 51% interest; in San Jose, GTE will have a 51% interest and AMPS will have a 49% interest.

Nor has GTE's propensity for abusing its local bottleneck power been limited to its relations with MCI. In *In re TeleCable*, 19 F.C.C. 2d 574 (1969), the Commission found that GTE and its subsidiaries, General Telephone of Illinois ("GTI") and GTE Communications ("GTEC"), conspired to prevent competing cable television companies from using GTE's utility poles (in an area where GTE had the local telephone monopoly) so that GTE's own cable television subsidiary could be awarded an important local franchise. The Commission found that, as a practical matter, the use of existing poles was necessary to provide cable television. *Id.* at 579. As the local monopoly telephone carrier in the area, GTI controlled the poles as part of its franchised monopoly. The Commission concluded that:

> GTI took advantage of its monopoly position in the area and engaged in anticompetitive conduct which ensured the award of the franchises to GTEC.

Id. at 588.

In *ITT* v. *GTE*, 449 F. Supp. 1158 (D Hawaii 1978) (opinion following remand), the court found that GTE violated Section 1 of the Sherman Act by vertically integrating into the telecommunications equipment manufacturing market and then engaging in exclusive telephone equipment purchasing policies with its equipment subsidiaries. GTE is now subject to a consent decree providing injunctive relief in that case intended to protect the telephone equipment market from further abuses of GTE's power due to the vertical integration of its telephone operating companies and its equipment manufacturers. (Appendix Tab 14, Final Judgment, *ITT* v. *GTE*, No. 2759 (D.Ha. 1978.)

In 1979, the FCC ruled that GSAT and one of GTE's telephone companies, Hawaiian Telephone Company ("HTC"), had violated the Communications Act and numerous FCC orders by refusing to interconnect with American Satellite Corporation. The FCC fined GTE for its violations and stated:

> "In sum, the conduct of these carriers, particularly HTC, clearly violated the terms of the earth station license and numerous prior Commission orders on the obligation of carriers to interconnect. Such preferential treatment as exhibited here borders on anti-competitive conduct. Further conduct of this sort by HTC or any affiliated carrier will be considered a very serious matter".

In re American Satellite Corp. v. *Hawaiian Telephone Company and GTE Satellite Corp.*, 73 F.C.C. 2d 317, 324 (1979).

Other actions are now pending against GTE alleging that GTE has abused its monopoly power over local service. DASA Corporation, a manufacturer of telephone equipment, has brought suit against GTE alleging that GTE violated the antitrust laws by prohibiting interconnection of DASA's equipment with GTE's telephone operating company equipment. *DASA Corp.* v. *General Telephone Co.*, 1977–2 Trade Cases ¶61,610 (C.D. Cal. 1977), *rev'd sub nom. Phonetele, Inc.* v. *American Telephone and Telegraph Co.*, 664 F.2d 716 (9th Cir. 1982), *cert. denied*, 103 S. Ct. 785 (1983). The case is awaiting trial after remand by the Ninth Circuit, which reversed the district court's erroneous dismissal on exclusive jurisdiction grounds.

D. Proposed Acquisition and Settlement

Beginning in 1981, GTE started analyzing the long distance telephone service market with a view toward using its GSAT satellites to provide OCC service. By June 1, 1981 GTE had completed a detailed 200 page strategy report recommending de novo entry by GTE. (Appendix Tab 28, GTE Deregulated Network Strategy Summary Report, dated June 1, 1981.)

Throughout the next year top-level GTE officers continued to develop and refine plans for a "build-from-within GTE entry" into the long distance market. (Appendix Tab 17, Executive Review of GTE, OCC MTS Business Plan Status, dated May 25, 1982; Appendix Tab 18, Confidential GSAT OCC Business Plan Review from R.C. Calafell to Dr. T.A. Vanderslice, dated June 28, 1982 at 6752; Appendix Tab 29, Business Plan for a GTE OCC, dated July, 1982.) It was clear to GTE from the beginning that:

> "Synergies alone are not significant enough to justify GTE ownership of intercity facilities. OCC and its related network investments must be attractive as a stand-alone business."

(Appendix Tab 16, GTE Deregulated Network Strategy Presentation to Dr. Vanderslice, dated June 18, 1981 at 5647; *see also* Appendix Tab 10, Excerpts from deposition of William R. Hampton at 19.)

As described to GTE's President, Thomas Vanderslice, the entry plan centered on use of four GSAT satellites approved for launch beginning in 1984. (Appendix Tab 18, Confidential GSAT OCC Business Plan Review from R.C. Calafell to Dr. T.A. Vanderslice, dated June 28, 1982 at 6763.) It was recommended that GTE provide MTS/WATS-type service to 144 cities by 1985 by using these satellites together with a number of earth stations connected by GTE's GTD–5 switches and optical fiber cable. (*Id.* at 6755–60.) This plan projected that GTE would grow rapidly and surpass MCI both in market share and revenue by 1988. (Appendix Tab 17, Executive Review of GTE, OCC MTS Business Plan Status, dated May 25, 1982 at 6128–29; Appendix Tab 29, Business Plan for a GTE OCC, dated July, 1982 at 7602.) By 1990, GTE expected to have 8.3% of the market, leaving AT&T with 71.5% and all remaining OCCs with 20.2%. (Appendix Tab 18, Confidential GSAT OCC Business Plan Review from R.C. Calafell to Dr. T.A. Vanderslice, dated June 28, 1982 at 6756; Appendix Tab 17, Executive Review of GTE, OCC MTS Business Plan Status, dated May 25, 1982 at 6123, 6128–29.)

Instead, in September, 1982, GTE opted to enter the OCC market by acquiring SPCC rather than by building from within.[11] As GTE's officers disclosed to the GTE Board of Directors on September 13, 1982, however, the acquisition route meant that GTE would not surpass MCI in market share. GTE's 1990 market share would range only from 4 to 7%—leaving ATT with from 76–85%. (Appendix Tab 20, GTE Board of Directors Featherbed Presentation, dated September 13, 1982 at 0130.) An internal analysis prepared for GTE Chairman Brophy also desclosed that acquiring SPCC at a cost of $750 million would make the initial book cost of SPCC's long-distance plant 87% higher than that of AT&T. (Appendix Tab 23, AT&T Versus Featherbed Competitive Cost Position.)

One month later, on October 16, 1982, GTE agreed to purchase SPCC and SPSC for approximately $750 million in cash. GTE also agreed to assume the acquired companies' debt, which was $265 million on December 31, 1982, as well as other leases and other obligations. (Southern Pacific Company 1982 Annual Report at 36.) Noting that the split between cash payments, debt assumption and acquired assets could vary, GTE's President identified the total cost of the acquisition as $1 billion: "I think the total package would be, we could say, close to a billion dollars." (Appendix Tab 12, Excerpts from Deposition of Thomas A. Vanderslice at 78–79.)

Therefore, to acquire companies whose assets totalled $477 million at the end of 1982, GTE agreed to incur costs of $1000 million—a premium of more than $500 million. In contrast, GTE valued the replacement cost of SPCC's network at $380 to $460 million. (Appendix Tab 20, GTE Board of Directors Featherbed Presentation, dated September 13, 1982 at 0162.)

On May 4, 1983, the United States filed this action to enjoin the acquisition under Section 7 of the Clayton Act for threatening to lessen long distance competition in GTE's monopoly franchise areas. GTE has stipulated that the complaint states a cause of action. Also on

[11] In early 1982, GTE had formed an evaluation team to evaluate SPCC as an acquisition. The project was code-named "featherbed"—a reference to the railroad business of Southern Pacific Company. (Appendix Tab 20, GTE Board of Directors Featherbed Presentation, dated September 13, 1982 at 0133.)

May 4, 1983, the United States filed a proposed settlement which would allow the acquisition subject to certain conditions.

On June 10, 1983, this Court ruled that the acquisition could take place pending completion of Tunney Act proceedings. The Court specifically conditioned its ruling upon the understanding and commitment of GTE and Southern Pacific that the acquired companies would be held separate and that "the Court may require the acquisition to be undone if that should be appropriate in the public interest. . . ." *United States* v. *GTE*, No. 83-1298, slip op. at 3 n.4 (D.D.C. June 10, 1983).

III. The Proposed Settlement Will Facilitate Anticompetitive Conduct and is Contrary to the Public Interest

A proposed settlement cannot be in the public interest if there is a substantial risk that it cannot cure the antitrust violation alleged in the underlying complaint. *United States* v. *AT&T*, 552 F. Supp. 131, 148–51 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S. Ct. 1240 (1983). That is precisely the problem with this settlement.

Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits a company from acquiring the assets of another corporation "where . . . the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." The stated intent of Congress in enacting this section was "to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding." S. Rep. No. 1775, 81st Cong., 2d Sess. 5 (1950). *See Hamilton Watch Co.* v. *Benrus Watch Co.*, 206 F. 2d 738, 741 (2d Cir. 1953).

The traditional analysis of vertical acquisitions under Section 7 has focused upon market foreclosure: "[T]he diminution of the vigor of competition which may stem from a vertical arrangement results primarily from a foreclosure of a share of the market otherwise open to competitors. . . ." *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 328 (1962). *See also Fruehauf Corp.* v. *FTC*, 603 F. 2d 345, 352 (2d Cir. 1979) (the competitive significance of a vertical merger results primarily from the degree to which it may increase barriers to entry into the market or reduce competition by foreclosing competitors of the selling firm from access to the market or a substantial portion of it.)

Thus, in *Ford Motor Co.* v. *United States*, 405 U.S. 562 (1972), the Court held that Ford violated Section 7 when it purchased Autolite, an important spark plug manufacturer. The district court found "that the acquisition marked 'the foreclosure of Ford as a purchaser of about ten percent of total industry output.' " *Id.* at 568. The Supreme Court explicitly approved the district court's ultimate conclusion:

> Ford's entry into the spark plug market by means of the acquisition of the factory . . . and the trade name "Autolite" had the effect of raising the barriers to entry into that market as well as removing one of the existing restraints upon the actions of those in the business of manufacturing spark plugs.

Id. at 568, 569; *see also United States* v. *E. I. duPont de Nemours*, 353 U.S. 586, 595 (1957) (DuPont's purchase of General Motors stock violated Section 7 by foreclosing a substantial portion of automobile finish market); *Filtrol Corp.* v. *Slick Corp.*, 1970 Trade Cases ¶ 73,035 at 88,048 (C.D. Cal. 1969) (manufacturer of fatty oils enjoined under Section 7 from acquiring sole producer of product commercially indispensable to fatty oils manufacturers because it would permit bottleneck control over the indispensable product), *aff'd per curiam*, 428 F. 2d 826 (9th Cir. 1970).

GTE's acquisition of SPCC inevitably would tend to foreclose competition in the intercity telecommunications market. Most significantly, the acquisition would increase GTE's incentive and opportunity to stifle competition through abuse of its monopoly exchange bottleneck. Moreover, the acquisition will promote cross-subsidization and evasion of rate regulation, will facilitate continued collusion between GTE and AT&T, and will increase barriers to entry in the long-distance market. The terms of the proposed settlement are inadequate to ensure equal exchange access or to maintain financial separation—especially given GTE's entrenched reliance upon market division and cross subsidization schemes. Indeed, the settlement's unnecessarily prolonged interconnection timetable demonstrates the inability of the Department of Justice adequately to check GTE's suppression of competition in the long-distance market.

A. The Proposed Settlement Will Permit GTE To Exploit Its Strategic Bottlenecks

This Court should disapprove the proposed settlement for the same reasons AT&T has been forced to divest its local telephone companies and the BOCs have been restricted from interexchange service. *United States v. AT&T*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 103 S. Ct. 1240 (1983). Just as AT&T abused its control over its local-service monopolies, GTE, even without owning a long distance subsidiary, consistently has refused to provide long distance carriers equal access to its local-service facilities. GTE's acquisition of SPCC would create an even greater incentive for GTE to exploit its local-service bottlenecks.

Simply stated, GTE's acquisition of SPCC is anti-competitive because GTE's monopoly control of local telephone facilities gives GTE a strategic bottleneck allowing it to discriminate against other intercity carriers. As the Department of Justice has explained:

> Firms seeking to provide intercity telecommunications services to customers in any market must reach those customers over facilities owned and operated by the firm providing local telecommunications services in that market. These local distribution facilities . . . are essential facilities to which firms providing intercity services must have non-discriminatory access in order to compete effectively over the full range of services. Thus, when a single firm provides both local, regulated telecommunications services in a given market, its control over local exchange monopolies gives it the ability—and its simultaneous presence as an intercity carrier provides it an economic incentive—to foreclose or impede competition in the provision of interexchange telecommunications in that market.

Competitive Impact Statement, 48 Fed. Reg. 22026 (1983) *United States* v. *GTE Corp.* (hereinafter "GTE Competitive Impact Statement.")

The *United States* v. *AT&T* case provides a textbook illustration of a local-telephone-service monopolist's ability to exploit its strategic bottleneck. This Court summarized the government's allegations in that case as follows:

> The government's claims with regard to the intercity services offerings of non-Bell carriers revolve around one central point: that because the Bell System (with its Operating Companies) possesses a monopoly in the distribution of local telecommunications services, meaningful competition in the provision of intercity services is precluded unless the non-Bell carriers are able to obtain interconnection with the Bell local distribution facilities under non-discriminatory terms and conditions.

United States v. *AT&T*, 524 F. Supp. 1336, 1352 (D.D.C. 1981). The Court stated that "[a]ny company which controls an 'essential facility' or a 'strategic bottleneck' in the market violates the antitrust laws if it fails to make access to that facility available to its competitors on fair and reasonable terms that do not disadvantage them." *Id. See also United States* v. *AT&T*, 552 F. Supp. at 162, 165, 171–72, 188, 195.

Under this fundamental doctrine, the anticompetitive exploitation of "strategic bottlenecks" had already been prohibited when Congress passed the Clayton Act. In *United States v. Terminal Railroad Association of St. Louis*, 224 U.S. 383 (1912), for example, the Supreme Court struck down an attempt by a limited group of railroads to purchase the sole rail terminal facility in St. Louis. The Court held that, because of an "extraordinary . . . topographical condition peculiar tot he locality," no other terminal could be built in the St. Louis area and that the defendants, therefore, would be overly tempted to discriminate unlawfully against their competitors. *Id.* at 405.

More recently, in *Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973), the Court condemned a regional power company's refusal to permit a municipal electric company to interconnect and transfer power over the regional company's lines: "Otter Tail used its monoploy power in the cities in its service area to foreclose competition or gain a competitive advantage, or to destroy a competitor, all in violation of the antitrust laws." *Id.* at 377. *See also Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982, 992 (D.C. Cir. 1977) (defendants wrongly refused to grant plaintiff access to football stadium: "The essential facility doctrine, also called the 'bottleneck principle,' states that 'where facilities cannot practically be duplicated by would-be competitors, those in possession of them must allow them to be shared on fair terms. It is illegal restraint of trade to foreclose the scarce facility.' "), *cert. denied*, 436 U.S. 956 (1978); *Woods Exploration and Producing Co.* v. *Aluminium Co. of America*, 438 F.2d 1288, 1300–01 (5th Cir. 1971) (defendants wrongly refused to allow

plaintiffs to use defendants' gas pipeline, the only one in existence in the relevant location, and refused to grant plaintiffs an easement so that plaintiffs could build their own pipeline), *cert. denied*, 404 U.S. 1047 (1972); *Gamco, Inc. v. Providence Fruit & Produce Building, Inc.*, 194 F.2d 484, 488 (1st Cir.) (owners of unique produce shipping-and-selling building wrongly excluded competitors from using it), *cert. denied*, 344 U.S. 817 (1952).

Common ownership presents an insuperable strucutrual problem

A company providing long distance service while controlling substantial local exchange monopoly has a very strong incentive to advance its own position through interconnection discrimination and cross subsidization practices. Equally important, due to the technical and regulatory compexity of the telecommunications industry, currently it is not possible effectively to preclude those anticompetitive practices by a common owner. Common ownership is a structural problem which requires a structural solution.

In approving the Bell System divestiture and service restriction settlement in *United States* v. *AT&T*, this Court stressed that AT&T no longer would "be able to discriminate against intercity competitors . . . by obstructing its competitors' access to the local exchange network" and that because the "local Operating Companies will not be providing interexchange services . . . they will . . . have no incentive to discriminate." 552 F. Supp. at 165. The Court emphasized in particular that "the principal means by which AT&T has maintained monopoly power in telecommunications has been its control of the Operating Companies with their strategic bottleneck position." *Id.* at 171. *See also MCI* v. *AT&T*, 1982-83 Trade Cases ¶ 65,137 (7th Cir. 1983) *petitions for cert. filed* July 11, 1983; *Litton Corp.* v. *AT&T*, 700 F.2d 785 (2d Cir. 1983) *Petition for cert. filed* June 28, 1983.

Like predivestiture AT&T, GTE controls a nationwide group of local telephone monopolies.[12] Approval of the acquisition of SPCC by GTE would place GTE in an anticompetitive posture very similar to the one condemned by this Court, the Department of Justice, and SPCC[13] in *United States* v. *AT&T*. As the government concedes here: "The potential for abuse of [GTE's] monopoly power over exchange access . . . underlies the present action and the proposed Final Judgment." GTE Competitive Impact Statement, 48 Fed. Reg. at 22027. Nevertheless, the government naively proposes to allow GTE to acquire SPCC despite the impossibility of adequately controlling GTE's incentive and ability to abuse its monopoly bottleneck power.

Indeed, if the government were confident that the proposed settlement would adequately control GTE's conduct, paragraph VI A of that settlement would not restrict GTE from acquiring "any carrier, *other than the acquired entities*, providing interexchange telecommunications service in the United States." 48 Fed. Reg. at 22024 (emphasis added). Apparently the government believes that an insuperable structural problem would result were GTE to acquire *two* interexchange carriers.

As the government readily admits: "The proposed final judgment does not—and cannot, given the lack of complete structural separation—eliminate all possibilities for exercise of GTE's power as a regulated monopolist in its franchised serving areas." *Id.* at 22033. Indeed, the government acknowledges that the separate subsidiary requirement of the proposed settlement simply cannot eliminate GTE's incentive to engage in anticompetitive conduct. *Id.* at 22034. Nevertheless, the government believes that the conditions imposed on GTE by the proposed settlement are sufficient to deter GTE from abusing its local monopoly bottleneck to stifle competition in the long-distance market. This contention directly contradicts the government's position in *United States v. AT&T*.

The government straightforwardly states that in this case, "The basic antitrust theories are the same as those of *United States v. American Telephone and Telegraph Company*, No. 74-1698 (D.C.C.)." GTE Competitive Imapct Statement, 48 Fed. Reg. at 22027. As the government notes, the consent decree entered in *United States* v. *AT&T* mandates, among other things, (1) the divestiture by AT&T of the exchange telecommunications and exchange access functions of the BOCs, and (2) line of business restrictions for the divested BOCs barring them from providing interexchange services. GTE Competitive Impact Statement, 48 Fed. Reg. at 22027; *United States* v. *AT&T*, 552 F. Supp. at 160, 188-189. Thus, while the government itself states that its theory in this case is identical to its theory in *United States* v. *AT&T*, it now claims that structural separation is unnecessary to safeguard competition despite its insistence on structural separation in *AT&T*.

The government's purported rationale for this change of heart is that, "Unlike the situation in AT&T, where a vertically integrated structure had been in existence for more than a century, GTE has never been operated in common with SPCC." GTE Competitive Impact Statement, 48 Fed. Reg. at 22034. This statement demonstrates a fundamental error in the government's analysis: it is GTE's local telephone companies which have bottleneck control power and rate-base cross subsidy potential—not SPCC. Indeed, SPCC need do very little other than use what GTE causes its telephone companies to offer. The proposed settlement will remove neither GTE's incentive nor ability to generate such "assistance" for SPCC.

In evaluating the settlement in *United States* v. *AT&T*, this Court noted that an alternative to the proposed decree would have been an injunction imposing "detailed constraints upon AT&T's activities." 552 F. Supp. at 166. The Court rejected such an alternative stating:

> it is unlikely that, realistically, an injunction could be drafted that would be both sufficiently detailed to bar specific anticompetitive conduct yet suficiently broad to prevent the various conceivable kinds of behavior that AT&T might employ in the future.

552 F. Supp. at 168. Noting that the FCC had been totally unable to enforce "the laws governing AT&T's behavior" the Court concluded:

> Furhtermore, there is no reason to believe that, in the end, a judicially-created bureaucracy would be any more capable than the FCC itself of performing the unending task of vigilance and oversight that would be required to ensure that an integrated Bell System did not engage in anticompetitive conduct.

Id.

In 1982, it was also clear to SPCC that common ownership of local and long-distance telephone companies is a strucutural problem leading to uncontrollable anticompetitive conduct.

> Indeed, the whole history of regulation of AT&T demonstrates that the FCC and other regulatory authorities have been unable to control AT&T anticomptetive conduct or to deal adequately with antitrust issues raised by its structure.

SPCC Comments on Proposed Consent Decree at 48, *United States* v. *AT&T*.

The government's error in relying on a prior absence of common operations by GTE and SPCC is further demonstrated by the fact that the modified final judgment in *United States* v. AT&T requires not only complete structural separation of the BOCs from AT&T, but also requires that the BOCs themselves refrain from providing interexchange services.

In its Response to Public Comments on Proposed Modification of Final Judgment in *United States* v. *AT&T*, the government noted that the FCC, among others, had argued that the BOCs ought not be restricted from competing in the long-distance market:

> More specifically, it has been argued that accounting or quasi-structural regulatory remedies, such as a separate subsidiary requirement for the provision of competive

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[12] To be sure, the "Bell System" included a larger local monopoly than GTE. The size of GTE's local monopoly is equivalent to one of the soon-to-be-formed regional operating companies. As GTE's Chairman replied when asked how important SPCC service to or from GTE cities would be to the success of Sprint: "In terms of universality of service, it can be important. You could have a competitive disadvantage if you didn't provide service to those companies, and competitors did." (Appendix Tab 11, Excerpts from Deposition of Theodore F. Brophy at 91.)

[13] In commenting upon the AT&T settlement, SPCC emphasized the importance of severing all ties between AT&T's local operating companies and AT&T Long Lines: Because AT&T has controlled the local exchanges, it could deny [long distance] competitors such as SPCC access to necessary local distribution facilities, it could provide inferior facilities when access was allowed, and it could charge discriminatory rates. The divestiture of the [Bell Operating Companies] is intended to reduce the identity of interest between AT&T and the local operating companies, thereby improving the opportunity for AT&T's [long-distance] competitors to obtain fair treatment.

SPCC Comments on Proposed Consent Decree at 6, *United States* v. *AT&T*. Now SPCC supports its acquisition by the nation's second largest local monopoly exchange company and seems unconcerned about the same anticompetitive effects it acknowledged one year earlier.

products and services, would adequately safeguard competition.

47 Fed. Reg. 23320, 23336 (1982). While the government's response is extended, the clarity of its analysis merits quotation:

If the BOCs, as rate base/rate of return regulated monopolists, were permitted to enter related competitive markets, they would have the means and incentive to disadvantage their competitors by cross-subsidization and discrimination in the terms and conditions of access to the local exchange. Neither of these problems has thus far proven amendable to successful regulatory solution. Indeed, the very basis for divestiture is that the anticompetitive problems inherent in the joint provision of regulated monopoly and competitive services are otherwise insoluble. Thus, permitting BOC entry into competitive markets would undermine the rationale for the divestiture that is the central remedial mechanism of the modification.

* * * * *

Particularly in a technologically dynamic industry such as telecommunications, there is little possibility that regulation is capable of detecting or preventing the very subtle forms of discrimination that would be available to the BOCs. Thus, even were it possible to prescribe in detail the appropriate technical parameters of interconnection under current technological conditions, regulators would have to have sufficient foresight to determine in advance the discriminatory potential inherent in tomorrow's technolgy, effectively to ensure fair competition. Even if it were possible, moreover, effectively to monitor the technical aspects of interconnection in an evolving technological environment, there would remain still more suble means of discrimination in operational activities, such as the timely provision, maintenance, testing, and restoration of facilities. In short, the BOCs, if permitted to engage in competitive activities, would have substantial ability to frustrate regulatory attempts to prevent discriminatory conduct.

Id.

This Court's ruling was equally incisive.

The proposed decree prohibits the divested Operating companies from providing interexchange services. This restriction is clearly necessary to preserve free competition in the interexchange market.

552 F. Supp at 188.

Like the proposed final judgment here, the modified final judgment entered in *United States* v. *AT&T* required the BOCs to "provide access services to interexchange carriers which are equal in type, quality and price" to the access services provided to AT&T and its affilites." 552 F. Supp at 196. Despite the detailed equal access requirements delineated in the modified final judgment, 552 F. Supp. at 195–200, 232–234, this Court nevertheless found that, if a BOC were permitted to provide interchange service, the complexity involved in providing equal interconnections to intercity carriers would allow the BOC to abuse its local monoploy bottleneck:

The key to interexchange competition is the full implementation of the decree's equal exchange access provisions. If the operating companies were free to provide interexchange service in competition with the other carriers, they would have substantial incentives to subvert these equal access requirements. *The complexity of the telecommunications network would make it possible for them to establish and maintain an access plan that would provide to their own interexchange service more favorable treatment than that granted to the other carriers.* Such a result would perpetuate the very inequities that the proposed decree is designed to eliminate.

552 F. Supp. at 188 (citations omitted, emphasis added).

The danger that GTE, the largest independent telephone company in the United States, will continue to engage in anticompetitive conduct if allowed to offer interexchange services is at least as great as the danger in allowing the divested BOCs to do the same thing. The assets of GTE equal or exceed the assets of any regional operating company following divestiture in *United States* v. *AT&T*. Moreover, the 16 million telephones served by GTE total only 1 or 2 percentage points less than the average number of telephones served by the regional operating companies. The 250,000 square mile area served by GTE substantially exceeds the average area that will be served by the regional operating companies. And unfortunately, anticompetitive conduct and antitrust violations are integral parts of GTE's recent history.

The terms of the proposed settlement do not remove GTE's ability to exploit its strategic bottlenecks

The Proposed Final Judgment would not result in equal exchange access for carriers such as MCI or preclude GTE from exploiting its strategic bottlenecks. In fact, the exchange access terms of the proposed settlement are considerably less rigorous than the exchange access terms of the MFJ, which will apply to fully divested carriers.

As a starting point, even the government must acknowledge that GTE has discriminated against MCI and others for many years and that it is doing so today. That is the conduct GTE and its employees have been used to since competition began. That is the "Strategic Thrust" recently characterized by GTE as "Fortress—hold off competition (1968–82)." (Appendix TAb 27, GTE Telephone Operations Long-Range Outlook—1983–1997, dated April, 1982 at 5699.) This discrimination-as-usual perspective also led a GTE Legal-Regulatory Subgroup to recommend that even if initially there would not be "any arrangement between GTE telcos and GTE OCC for carriage of MTS/WATS traffic . . . on an exclusive basis", still "[a]t a later date, depending upon the regulatory climate and other factors at that time, a closer working relationship with the GTE telcos might be pursued." (Appendix Tab 25, GTE OCC Business Legal/Regulatory Subgroup Position Paper Analysis of Regulatory/Legal Framework for OCC's, dated April 24, 1981 at 1309, 1379–80; see also Appendix Tab 15, Competitors' Regulatory Responses at 9152.)

Were the proposed settlement to be approved, GTE's incentive for exchange access discrimination would increase in the future. Not only would GTE own its own long distance carrier, its local telephone companies could lease $2 billion of their own toll switching and transmission facilities to AT&T on an exclusive basis without any equal interconnection requirement. (Proposed Settlement § V.C.2.)

Given the history of discrimination and these increased incentives to discriminate, it is noteworthy that the proposed settlement places no restrictions on communications between SPCC personnel or staff and GTOC personnel or staff. As long as "proprietary information" is not provided (*Id.* at § IV.A.3.) and no single group has managerial or operational authority" over both SPCC and a GTOC (*Id.* at § IV.B), any officer or employee of GTE or SPCC can communicate with any other as frequently they desire. There are no limits on GTE's control of SPCC and the GTOC's. Indeed, GTE's Chairman and President are expresly permitted directly to control SPCC and the GTOCs. (*Id.* at § IV.A.2. and B.) Similar control by John de Butts over AT&T and the BOCs was sufficient to put in motion events recounted for nearly one year during the trial in *United States* v. *AT&T*.

The proposed settlement does not provide sufficient separation between GTE, SPCC and the GTOCs to frustrate the development of interconnection discrimination. As long as GTE is allowed to own SPCC, no settlement could do so.

Nor will the equal access schedule result in real equal access. Under the terms of the proposed settlement, GTE is supposed to provide non-discriminatory access to interexchange carriers within 12 months of a written request or by a fixed date which varies by the type of GTE end office switch—*whichever time is later.* (Proposed Settlement App. B ¶ A.1.) Only one fixed date, January 1, 1985, will occur during the next three and one-half years.[14] (*Id.* at App. B ¶ A.1.(a).) MCI was informed by GTE personnel on May 24, 1983, that GTE has installed less than 20 of the 1–ESS or DMS–100 type switches for which equal access is due on January 1, 1985. In contrast, internal GTE documents show that in 1984 GTE will have over 6 million subscriber lines connected to digital and analog electronic switches—including over 4 million lines at GTE's Class A end offices or 64% of all such lines. (Appendix Tab 26, GTE Basic Regulated Network Business Plan, dated July 16, 1982 at 6690.)

The inadequacy of the proposed equal access schedule for specific GTE switches is demonstrated by MCI's experience in obtaining prompt, inexpensive equal access from Sugar Land Telephone Company. Under the proposed GTE schedule, 1–EAX and 2–EAX electronic switches are not due for equal access until September, 1987—more than four years in the future. Sugar Land installed a GTE Automatic Electric 1–EAX

[14] Under Appendix B ¶ A1 of the MFJ, the BOCs must offer equal exchange access at every end office by September 1, 1986. 552 F. Supp. at 233. Internal GTE documents suggest that GTE could provide comprehensive equal access in one year or less. (Appendix Tab 28, GTE Basic Regulated Network Business Plan, dated July 16, 1982 at 6823.)

switch in 1975–76. (Appendix Tab 2, Affidavit of Robert C. Brown, III at ¶ 4.) In 1982 MCI asked Sugar Land for trunkside interconnection to its 1–EAX switch. Sugar Land agreed and on July 25, 1982, sent a purchase order to automatic Electric, asking that the switch he modified to provide trunkside interconnection to MCI. (*Id.* at ¶ 5, Attach. 2.) Automatic Electric accomplished the changes and the switch was in service one month and five days later on August 31, 1982. (*Id.* at ¶ 5.) Automatic Electric's invoice discloses that it only took 37 man hours of work to accomplish the changes. (*Id.* at ¶ 5, Attach. 3.). The total cost was $13,292.66, including $10,000.00 for the necessary software. (*Id.*) Thus GTE already has completed software changes to provide trunkside interconnections on 1–EAX switches. Software changes are essentially all that is required for equal access. (Appendix Tab 9, Excerpts from deposition of William E. Starkey at 98–99.) It simply cannot be in the public interest to delay equal interconnection for over four years when it can be accomplished in 37 man-hours of work.

Under the proposed settlement GTE need not provide equal access at end offices servicing 10,000 for fewer lines. (Proposed Settlement App. B ¶ A.1.(c).) GTE is also not required to provide equal access on step-by-step switches.[15] (*Id.* at App. B ¶ A.4.) In contrast, under the MFJ, for a BOC to be relieved of its equal access requirement at any size end office or for any switch, the BOC must seek permission from the Court and carry the burden of showing that for particular categories of services such access is not physically feasible. 552 F. Supp. at 233. Even then, any deviation can be only for the minimum divergence in access necessary, and for the minimum time necessary to achieve such feasibility. *Id.* MCI suggests that it is not in the public interest to exempt GTE from providing equal access without the requirement of any showing or with any limitations.

Not only is the access schedule improperly narrow and prolonged, it makes no attempt to provide GTE with any incentive for expedition or MCI or others with any improved access while the schedule moves slowly along. If equal access or carrier preselection or reduced digit access is not to be available for a lengthy period in an end office, MCI and every other interexchange carrier other than SPCC able to serve that office should have an equal opportunity to receive the limited premium access. If GTE's "partner" AT&T and GTE's interexchange carrier were receiving inferior access at a 1–EAX switch, GTE might just be able to convert the switch in less than four and one-half years. Of course the carrier receiving the limited premium access would pay a reasonable premium fee.[16]

[15] The Court has not been informed what switches or office sizes exist or are expected to exist in GTE's telephone companies. This deficiency alone precludes a public interest finding.

[16] The increased fee for limited premium access should reflect the greater of the cost or value differential as compared to any lesser grade of access.

Numerous other provisions in the proposed settlement are also inadequate. For example, paragraph V.A.3. purports to preclude SPCC from non-public GTOC information. No provision is included, however, for notifying MCI or others what public information exists or is being provided to SPCC. A recent illustration highlights the problem. In 1982, GTE was refusing to provide equal interconnections to MCI or even to discuss such interconnections. (Appendix) Tab 1, Affidavit of Bert C. Roberts, Jr. at ¶ 10; Appendix Tab 3, Affidavit of Richard Q. Allen at ¶ 15.) Yet in November, 1982, with no notice ot MCI, GTE "discussed and prioritized" with SPCC a long list of "Exchange Access Serivce Items." (Appendix Tab. 22, Letter from David O. Horton, GTE Services Corp. to Richard D. Petty, SPCC, dated November 23, 1982.)

Article III of the proposed settlement would remove all equal access obligation from "any GTOC, or any portion thereof" which GTE might sell to any non-affiliated person. Given GTE's long and continuing history of interconnection discrimination, there is no public interest basis for allowing GTE to receive a higher price by selling a GTOC or GTOC assets free from the settlement's equal access obligation. For example, GTE should not be able to circumvent the requirement to provide equal access from a particular end office by selling that exchange to another telephone company as the date for equal access approaches.

Paragraph VI.A. of the proposed settlement restricts GTE from acquiring another interexchange carrier for a 10 year period. GTE's bottleneck power comes from its local telephone monopolies—not from an interexchange carrier. Remarkably, the proposed settlement does not restrict GTE in any way from enlarging its bottleneck power by acquiring additional local telephone companies or exchanges. In fact, under the proposed settlement GTE could acquire BOCs or regional operating companies and rebuild the divested Bell System.

The criteria for determining GTE's exchange areas in the proposed settlement should be based on local service areas.[17] Paragraph II.H.1 of the proposed settlement provides instead:

> Any [GTOC] exchange are shall encompass one or more contiguous local exchange areas serving common social, economic, or other purposes, even where such configuration transcends municipal or other local governmental boundaries. . . .

This criterion for delineating the GTOC's exchange areas is identical to the criterion applied by this Court in *United States v. AT&T* for defining the permissible scope of BOC LATAs. *United States v. AT&T*, 552 F.Sup. 131, 229 (1982). This Court explicitly stated in the *AT&T* case that the above quoted criterion did not limit the permissible scope of the BOC LATAs to being coexistensive with local service areas. *United Statess v. AT&T*, Civ. No. 82–0192, slip. op. at 27–28 (D.D.C. April 20, 1983). Consequently, the Court permitted the BOCs to form LATAs substantially larger than local calling areas and frequently containing several switches performing Class 4 functions.

Incorporation here of the same criterion to determine the permissible scope of the GTOC's exchange areas would result in unnecessarily large GTOC exchange areas because the concerns which led the Court to approve large LATAs in *AT&T* are not present here. In *AT&T*, this Court had two primary concerns in determining the appropriate size of the LATAs: (1) Minimizing the incentive of the BOCs to discriminate against long-distance carriers by restricting the extent to which the BOCs could compete in toll and long-distance markets, and (2) insuring the ability of the BOCs to operate as viable entities. *United States v. AT&T*, Civ. No. 82–0192, slip op. at 11–14, 20 (D.D.C., April 20, 1983). Because the Court there was concerned with insuring the financial viability of the divested BOCs, the Court approved LATAs which would permit the BOCs to compete with long-distance carriers in many toll and long-distance markets.

Here, however, the Court should not be concerned with the financial viability of the GTOCs and therefore should not permit them to compete outside of local calling areas in toll and long-distance markets. GTE has made a free and independent business decision to acquire a long-distance telecommunications company while also retaining the GTOCs. It should not be the concern of the Court to oversee the wisdom of, and provide an insurance policy for GTE's business decisions by allowing the GTOCs to compete outside of local calling areas in toll and long-distance markets. GTE has represented to the FCC that its acquisition of SPCC would in no way impair the financial viability of the GTOCs. *In re Application of GTE Corp. and Southern Pacific Co. for Consent to Transfer Control of Southern Pacific Communications Co. and Southern Pacific Satellite Co.*, No. ENF–83–1, slip op. at 15 (F.C.C. July 1, 1983).

Furthermore, if this acquisition were to be approved, and it should not be, the Court rather than the government should be the one to approve Exchange Areas (¶ II.H.), approve the association of serving areas (¶ II.P.), approve any transfer of assests, stock, operation or services to SPCC (¶ IV.D.1.(e), and 2(e)), receive reports and affidavits from GTE officers (¶ II.F.), approve so-called separation procedures and equal procedures (¶ V.E.), enforce, implement or construe the settlement sua sponta (¶ VII.A.), and order further relief sua sponta (¶ VII.B.).

B. The Proposed Settlement Will Facilitate Collusion In the Relevant Market

For the last third of a century, this nation's telecommunication industry has been run by a cartel consisting of AT&T, GTE, and other

[17] Though MCI objects now to the criteria contained in the proposed judgement for determining the permissible scope of GTE's exchange areas, MCI does not now comment on the exchange area plan proposed by GTE. MCI first received a copy of GTE's proposed plan on July 7, 1983. In view of the minimal time it has had to review GTE's proposed plan, and in view of the fact that this Court's ruling in *AT&T* regarding associations between the BOC LATAs and GTOCs was issued only one week ago, MCI intends to submit comments regarding GTE's proposed plan once it has had an adequate opportunity thoroughly to study the plan.

independents. All cartel participants have benefitted from AT&T's ability to extract monopoly profits from long-distance service. All participants have sought actively to stifle competition in the long-distance field.

Now, an important member of that cartel, GTE, desires to purchase one of the two largest new long-distance carriers, SPCC and MCI, which have managed to carve a small niche in the cartel's enormous long-distance market share. If SPCC is allowed to be assimilated, only MCI will remain outside the cartel and MCI, too, will be vulnerable to takeover by another cartel member.[18] Thus GTE's acquisition of SPCC— dangerous in itself—also represent a stepping stone toward resurrecting the cartel's longstanding 100% grip on long-distance telecommunications. *See, e.g., American Tobacco Co.* v. *United States*, 328 U.S. 781 (1946) ("big three" cigarette manufacturers effectively colluded to stifle competition by cheaper cigarette brands); *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208 (1939) (film distributors found to have colluded in order to maintain high film rental fees); *Yamaha Motor Co.* v. *F.T.C.*, 657 F.2d 971 (8th Cir. 1981), *cert. denied*, 456 U.S. 915 (1982) (joint venture agreement between competing manufacturers held to violate Section 7; *Engine Specialties, Inc.* v. *Bombardier Ltd.*, 605 F.2d 1 (1st Cir. 1979), *cert. denied*, 449 U.S. 890 (1980) (agreement between two companies to form jointly-owned manufacturing subsidiary held to constitute unlawful territorial allocation scheme).

GTE's central role in the cartel is unquestioned. SPCC itself stated that GTE, like other independents, is engaged in a "partnership," with AT&T and that their interests are "similar all the way." (SPCC Proposed Findings at 26, 258–59, *SPCC* v. *AT&T*, No. 78–545 (D.D.C.)).

Under paragraph V.C.2 of the proposed settlement, GTE's local telephone companies can retain $2 billion of toll facilities and lease them exclusively to AT&T. This not only presents a local/long distance conflict for the GTOCs, it provides an opportunity for AT&T, the BOCs and GTE to continue their collusive partnership.

For example, GTE could restrain SPCC from competing with the BOCs for intra-LATA traffic or with AT&T on some routes and in return GTE could receive increased toll switch lease payments for the rest of this century. GTE's President testified that GTE's plans do not anticipate that SPCC will provide intra-LATA service. (Appendix Tab 12, Excerpts from Deposition of Thomas A. Vanderslice at 99–100.) Moreover, GTE's Chairman testified "only after the settlement of the AT&T antitrust case" did GTE decide to acquire SPCC "to offset what we saw was a major erosion of our toll revenue." (Appendix Tab 11, Excerpts from Deposition of Theodore F. Brophy at 28).

A primary GTE concern throughout this period has been how best to maintain and protect its arrangements with AT&T. For example, Robert C. Calafell, a high level GTE employer assigned to the SPCC acquisition evaluation team emphasized the "implication of lesser impact on GTE/Bell relationship if we purchase *existing OCC* vs. throwing our lot in market with a new start." (emphasis in original) (Appendix Tab 19, Note from Robert C. Calafell to Thomas J. Vos, dated April 5, 1982, at 9882; see also Appendix Tab 26, GTE Basic Regulated Network Business Plan, dated July 16, 1982, at 6501 ("Throughout the 1983–1987 cycle, conduct business within the partnership to maximize benefits to GTE Telops and avoid undo strain on the . . . partnership").)

C. The Proposed Settlement Will Promote Cross-Subsidization and Evasion of Rate Regulation

The acquisition of an unregulated intercity carrier [19] by GTE, the owner of numerous regulated local operating companies, also provides obvious opportunities for GTE to cross-subsidize its operations and evade rate regulation. For example, GTE's local telephone companies could supply services to SPCC at bargain rates, thereby shifting costs and expenses from its unregulated long-distance carrier to its regulated local carriers. GTE could also have its local telephone companies overcharge all interexchange carriers, including SPCC, for exchange access and then transfer the excess funds to SPCC through another GTE subsidiary such as GTE Services Corporation by using inflated license contract payments. Through these subsidiaries, GTE can also shift profits from its regulated subsidiaries to its unregulated ones, including SPCC, by overpricing equipment and services to local ratepayers while underpricing different inputs to SPCC. Indeed, SPCC itself has argued that state and federal utility regulators are unable to prevent utilities from raising prices on monopoly services and cross-subsidizing competitive services. SPCC Proposed Findings at 28–29, *SPCC* v. *AT&T* (D.D.C. No. 78–545).

The proposed settlement prohibits SPCC and the GTOCs only from providing administrative, engineering, research and development services to each other. (¶ IV.A.4.) No mention is made of services such as advertising, maintenance, transportation or warehousing. At a minimum, SPCC and the GTOCs should be restricted to dealing with each other only in tariffed services.

The harm flowing from GTE's ability to cross-subsidize is twofold: (1) it hinders competition in the intercity telecommunications market by granting one competitor, SPCC, an unfair financial advantage and (2) it injures the ratepayers in GTE's local service areas who must pay extra for local service in order to subsidize GTE's long-distance efforts.

Stopping cross-subsidization was a principal benefit of the AT&T divestiture. In approving divestiture, this Court stated "if cross subsidization is a problem, a separate subsidy will not resolve it." 552 F. Supp. at 173. GTE's desire to own concurrently local-service and intercity telecommunication subsidiaries raises the very same potential for abuse.

No less an expert on cross-subsidization than Maxwell G. Killoch, the retired AT&T Assistant Vice President of Service Costs (who testified before this Court in *United States* v. *AT&T*) stated to the Chairman of the FCC:

"I strongly recommend that the proposed merger of GTE and SPCC be denied. GTE is presently in both regulated and unregulated markets. Their acquisition of SPCC would add another unregulated market for which they could use their monopoly power in the regulated market to subsidize various activities in the unregulated sector. In case after case, the FCC advocate, Professor William Melody has declared against the very economic assemblege for which GTE strives."

"For the same reasons that led the Justice Department to fight to separate the horizontal and vertical integration of Bell are applicable to GTE. Its acquisition of SPCC would indeed make GTE the new communications giant both vertically and horizontally organized along with all the other GTE foreign and domestic product markets."

As a voice of the public, I recommend that for all sound reasons in favor of public benefits and against the private benefit of GTE and SPCC, that the merger be denied." (Appendix Tab 24, Letter from Maxwell G. Killoch to Mark S. Fowler, dated November 2, 1982.)

D. The Proposed Settlement Will Increase Barriers To Entry

As the nation's second largest local-service provider, GTE will have substantial competitive advantages over other actual and potential intercity carriers if it is allowed to acquire SPCC. No other actual or potential long-distance competitor will have the ability to exploit local-service bottlenecks, the ability to extract collusive concessions from AT&T Long Lines, the ability to cross-subsidize and evade rate regulation or the ability to market "GTE Sprint" services to millions of subscribers of GTE telephone companies.[20]

The problem of entry barriers raised by GTE's acquisition of SPCC extends to the national market for intercity telecommunications. The value of an offer to provide intercity service rests in its capacity to reach as many points in the United States as possible. As a result, barriers to entry in those geographic areas where GTE has a local service monopoly inhibit entry in other parts of the country as well.

Finally, the effect of added barriers to entry in this case is heightened by the domination

[18] Numerous OCCs already have been acquired or have ceased operations: including Datran Corp., CPI Microwave, Microwave Service and Mitran. Although resellers inhibit AT&T's ability to discriminate against smaller users, resellers lack their own competitive transmission facilities.

[19] Competitive carriers like SPCC are not subject to FCC rate base regulatin. *In re Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, 85 F.C.C. 2d 1 (1980).

[20] This Court described AT&T's local-service bottlenecks and its ability to cross-subsidize operations as "the two main barriers that previously deterred firms from entering or competing effectively in the interexchange market." 552 F. Supp. at 171. GTE now seeks to revive those barriers.

of the intercity market by AT&T. AT&T's market share is so high and GTE's propensity for collusion with Long Lines is so great, that new entry would be unlikely. As the Federal Communications Commission has stated in a related context: "An accommodation, however subtle, between a merged GTE-Telenet and AT&T would dramatically reduce existing competition, and would certainly chill most, if not all, potential entrants." *GTE-Telenet Merger*, 72 F.C.C. 2d 111, 136 (1979).

GTE has already recognized the substantial capital required for *de novo* entry. (GTE-SPCo § 214 Application to FCC at 3 (Oct. 26, 1982).) If this acquisition is permitted, it is highly improbably that any new firm will venture upon a *de novo* entry. GTE's Chairman has candidly stated: "I don't think there will be any new entrants into this field and I think there may be a diminution of the field." (Appendix Tab 11, Excerpts from Deposition of Theodore F. Brophy at 15.) Internal documents disclose GTE's expectation that an "obligopoly will result" in intercity services market. (Appendix Tab 16, GTE Deregulated Network Strategy Presentation to Dr. Vanderslice, dated June 18, 1981 at 5660.)

IV. Conclusion

The AT&T divestiture should mark the beginning of an exciting, turbulent period telecommunications competition. New competitiors, new capital and new ideas should be unleashed. But the renaissance will be jeopardized before it begins if GTE is permitted to acquire SPCC. For all the reasons stated, this Court should reject the proposed settlement as contrary to the public interest.

Respectfully submitted,

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Dated: July 15, 1983.

Certificate of Service

Ross B. Bricker, an attorney, certifies that on Friday, July 15, 1983, he caused a copy of Comments of MCI Telecommunications Corporation on Proposed Settlement to be served by messenger upon all counsel listed on the attached service list.

Ross B. Bricker

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *GTE Corporation*, Defendant, Civil Action No. 83-1298.

Comments of Satellite Business Systems on the Proposed Final Judgment

Satellite Business Systems ("SBS") hereby submits these Comments on the proposed Final Judgment submitted upon consent by the Department of Justice ("DOJ") and GTE Corporation.

Introduction

DOJ challenged GTE's acquisition of Southern Pacific Communications Company ("SPCC") and Southern Pacific Satellite Company ("SPSC") on the grounds that the resulting vertical integration of the local GTE telephone operating companies "creates both the incentive and ability, through abuse of monopoly power over local distribution facilities and through evasion of rate-of-return regulation and cross-subsidization, for the leverage of monopoly power in regulated markets to impede competition (or the development of competition) in related competitive (or potentially competitive) markets." Competitive Impact Statement ("CIS") at 4-5. These are the same theories that underlay the Government" in *United States* v. *American Telephone & Telegraph Co.*, Civ. Action No. 74-1698 (D.D.C.). The proposed Final Judgment, like the Modification of Final Judgment in that case, is aimed at eliminating the incentive and ability of a local monopoly carrier to cross-subsidize related interexchange carriers or to discriminate against unrelated interexchange carriers in the provision of access to the local exchange. *See* CIS at 7-9.

As an interexchange carrier unrelated to GTE through either corporate structure or traditional telephone industry "joint venture" arrangements,[1] SBS is vitally interested in assuring that the proposed Final Judgment will be effective in procuring for SBS and other competitive interexchange carriers equal and non-discriminatory access to GTE's local telephone networks.

The Proposed Final Judgment Should Be Clarified To Ensure That Unrelated Interexchange Carriers Timely Receive Access That Is, in Fact, Equal to Access Received by SPCC, SPSC, GTE, and AT&T

The proposed Final Judgment mandates provision "to all interexchange carriers" of "exchange access . . . and exchange survices for such access on an unbundled, tariffed basis, that is equal in type, quality, and price for all interexchange carriers . . ." It further proscribes discrimination

"between the interexchange telecommunications services . . . of GTE . . . and the interexchange telecommunications services . . . of other persons in the:

* * * * *

2. interconnection and use of [GTE's] exchange telecommunications of exchange access services and facilities or in the charges for each element of service; and

3. provision of new exchange access . . . services and the planning for and implementation of the construction or modification of facilities used to prove exchange access . . ."

Final Judgment, Section V. A. B.

This mandate is limited in two major respects. First, it does not address how interexchange carriers will obtain access to GTE exchange areas above the end, or class 5 equivalent, office, although interexchange carriers must receive access through the same class 4 equivalent switch and toll completing field used by AT&T and GTE for their interexchange traffic in order to receive access that is, in fact, "equal." Second, end offices need not be upgraded or modified to provide multiple carrier equal access until 1985 at the earliest, while access through numerous end offices may not be available to interexchange carriers before 1990, if ever.[2]

A. Equal access requires that all interexchange carriers be given access through the same GTE toll switch and toll completing field available to AT&T, GTE, SPCC and SPSC.

The Final Judgment ignores the fact that providing access to multiple carriers that is "equal in type and quality" requires not only modification of end offices, but the use of serving offices and trunks which form the interface between toll and local networks must also be of equivalent quality. Throughout the Tunney Act proceedings in *United States* v. *American Telephone and Telegraph Co.*, Civ. Action No. 74-1698 (D.D.C.), SBS demonstrated in its Comments that only such access is equal. *See* Comments of Satellite Business Systems on the Plan of Reorganization of the American Telephone and Telegraph Company Pursuant to the Modification of Final Judgment, February 14, 1983, at 11, 18-22, Appendix A.

Whatever the difficult economic trade-offs such access may have presented for the Bell Operating Companies, *see United States* v. *American Telephone & Telegraph Co.*, Civ. Action No. 82-0192 (D.D.C. July 8, 1983) at 8-11, such difficulties do not exist in this case. GTE now owns and will continue to own the

[1] The proposed Final Judgment seeks to prevent GTE from favoring, not only SPCC and SPSC, but also AT&T, with which GTE "participates in a joint venture . . . for the provision of intercity telephone services . . . known in the telecommunications industry as the 'partnership.' " CIS at 8.

[2] "Equal exchange access" must be "offered" through two types of end offices employing electronic stored program control switches "no later than January 1, 1985," while access through stored program control switches is to be offered by January (GTD-5) or September (1-EAX and 2-EAX switches) 1987. Final Judgment, Appendix B, Section A.1.(a). Regardless of the schedule, SBS understands that the parties maintain that GTE need not actually provide such to any carrier access until "twelve . . . months after receipt of a written request from any interchange carrier other than AT&T".

Equal exchange access "shall be offered through end offices serving at least two-thirds of GTE's exchange access lines" by September 1, 1987, one full year after the Bell Operating Companies will have provided equal access at substantially all their end offices. 1990 is the final compliance date set forth in the Final Judgment for the remaining GTE offices, but there is no requirement that equal access be available at all GTE end offices by even that late date. End offices serving less than 10,000 lines and step by step offices are exonerated from equal access obligations and even larger offices need not provide equal access where "changed circumstances" make it economically infeasible to upgrade an end office.

"above end office" switches in GTE exchange areas. According to information provided informally to SBS by GTE engineers, in many cases GTE now operates its network by routing both toll and some local traffic through the GTE class 4 equivalent office (which functions as a combined toll and local tandem switch). The difference in GTE's routing of toll and local traffic is not in the switch employed but in the trunking: toll traffic is routed on toll grade trunks between the class 4 and 5 offices, while separate trunks engineered for local quality are sometimes used to carry local calls between two end offices via the toll/tandem switch.

No reason appears that the toll traffic of all interexchange carriers should not receive precisely the same routing as AT&T's and GTE's own toll traffic. Accordingly, the Final Judgment or GTE's commitments pursuant to that Judgment should be clarified to make explicit that interchange traffic will be routed via the same GTE toll switches and toll trunks within GTE exchange areas as are used by AT&T and GTE for their interexchange traffic.

Furthermore, improvements in the quality of access provided to traffic terminating in GTE exchange areas can be made even before end offices are upgraded to equal access functions. Specifically, in all exchange areas where GTE has a toll (*e.g.*, class 4 equivalent) switch and toll quality trunks connecting these switches with end offices, GTE can route all interexchange carrier traffic terminating in those exchange areas through these existing switches and toll grade trunks without any software changes or significant added costs. As long as sufficient capacity exists or can be efficiently added to handle the additional interexchange carrier traffic, there should be no significant additional cost to GTE to provide toll terminating service in this way, and GTE should be required to provide such routing. As end offices are upgraded to provide interexchange carriers equal access for origination of their traffic, that traffic should, of course, also be route through the existing toll trunks, which is GTE's current practice for toll traffic. Therefore, SBS seeks clarification from GTE as to its interim and long term equal access implementation plans for routing the toll traffic of competitive, non-partnership carriers.

B. The Final Judgment should be modified to clarify GTE's obligation to install new switching capacity.

The proposed Final Judgment mandates equal access only through end offices having switches either "technologically capable" of such access "or for which the capability of providing equal exchange access is commercially available" to GTE. Final Judgment, Appendix B, Section A.1. This appears to mean that GTE is not required to replace switches to furnish equal access. Yet the provisions calling for equal access through end offices serving two-thirds of GTE's exchange access lines by 1987, and for access through all end offices serving more than 10,000 lines by 1990, may require replacement, not merely upgrading, of switches. The Final Judgment should be clarified so that there will be no question that the access through the requisite number of end offices will be provided, even if that entails replacement of existing switches.

It is not clear why end offices of 10,000 or fewer lines should be entirely exempt from providing equal access. SBS understands that such end offices serve a significant percentage of GTE's customers. Depending upon the location of such offices, interexchange carriers may wish to serve them. It is not specific enough to declare that they are rural locations. As pointed out below, these offices may be associated with larger LATAs and constitute part of a vital market area. The parties should be required to identify the number and location of those exempt offices and to justify a refusal to offer equal access through such offices, at least where requests for such access are made.

To provide some access service in the potentially large GTE territory served by these smaller end offices, GTE has agreed to offer "a commercially available trunkside interconnect arrangement to all interexchange carriers, unless such access is not physically possible except at cost that clearly outweigh potential benefits to users of telecommunications services." Final Judgment, Appendix B, Section A.4. This "trunkside interconnection" capability is not further described, except for a brief mention in the Competitive Impact Statement. CIS at 30–31. It may be that this capability will be useful for interexchange carriers, but it should be further described.

C. The schedule for providing equal access should be accelerated.

SBS has not quarrel with the basic premise that the schedule for providing equal access should take account of GTE's existing network capabilities and of the demand for access services. CIS at 25–26. It is not clear, however, that the very lengthy periods provided in the proposed Final Judgment are necessary. The issue of demand has been appropriately treated by requiring a written request for access service before requiring its provision. What is not clearly appropriate is the amount of time GTE has been given to provide equal access, particularly through stored program control switches.

It appears that equal access can be made available through stored program control switches in advance of the dates set out in the proposed Final Judgment. Software for upgrading Western Electric switches similar to the GTD–5, 1–EAX and 2–EAX switches will be available from AT&T by 1985.[3] Thus, even if GTE were unable to develop its own software, or to obtain it from another vendor, AT&T should be a source for such software long before the 1987 date scheduled by the Final Judgment. Nor is it clear that the 1990 date for equal access through end offices serving more than 10,000 lines is reasonable. GTE should explain in more detail where and when it expects to obtain the necessary software and hardware to meet these schedules and why those switches requiring only software modification cannot be upgraded more quickly.

Of perhaps greater concern is the provision that permits delays in provision of equal access for 12 months beyond the already distant dates scheduled in Section A.1 of Appendix B. Thus, while GTE must "offer equal exchange access through certain end offices by certain dates," it "must 'provide' equal access to any carrier requesting such access only within 12 months after such a request." CIS at 28, n. 20.

SBS is aware of no technical reasons that would require so much time to implement equal access services at a particular end office, assuming that the "groundwork" required by the phase-in schedule (adjusted as discussed above) is met. *Id.* The parties should be required to submit data supporting a 12 month lead time for providing equal access at a particular end office and, in the event there is insufficient support, that time should be shortened.

Conclusion

For the foregoing reasons, SBS requests that the Final Judgment be clarified regarding the scope of GTE's obligation to provide equal access above the end office, to replace existing switches as necessary to provide equal access through the required number of end offices and to provide a phased-in schedule for equal access that will not unduly delay the ability of interexchange carriers to offer their services to customers in GTE's local telephone territory.

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Dated: July 15, 1983.

Respectfully submitted,
Sean A. McCarthy,

U.S. District Court for the District of Columbia

United States of America, Plaintiff, vs. *GTE Corporation*, Defendant; Civil Action No. 83–1298.

Comments of the Public Service Commission of West Virginia in Response to the Proposed Local Access and Transport Areas Filed by GTE Corporation

Dated: July 5, 1983.

[3] The GTD–5 is very similar to the Western Electric No. 5ESS, for which equal access software will be available in 1985. The 1–EAX is similar to the Western Electric No. 1ESS for which equal access capability will be available in 1984. See AT&T Response to Objections to its Plan of Reorganization, *United States* v. *American Telephone & Telegraph Co.*, Civ. Action No. 82–0192 (D.D.C. 1983) at A–11. The GTE 2–EAX is similar to the Western Electric No. 2BESS, for which equal access software will be available by later 1985. Plan of Reorganization, *United States* v. *American Telephone & Telegraph Co.*, Civil No. 82–0192, (D.D.C. 1982) at 12.

The Public Service Commission of West Virginia (hereinafter "PSCWV") respectfully files with the Court and makes available to the GTE Corporation, and the Department of Justice the Comments of the PSCWV in response to GTE Corporation's proposal for the configuration of exchange areas in the State of West Virginia.

I. Preliminary Statement

Since the receipt on July 5, 1983, of GTE Corporation's (hereinafter "GTE") proposed LATA configurations in West Virginia the Public Service Commission of West Virginia and its Staff have been attempting to evaluate the proposal by GTE. After several discussions with GTE's West Virginia operating officers, we have determined that it is impossible to respond with specific cost studies to certain aspects of the LATA filing because we do not, at present, have the data which is necessary to determine the exact cost of rehoming GTE's exchanges in West Virginia's eastern panhandle.

The PSCWV respectfully requests that its Comments be viewed in light of this indicated limitation. Our analysis of the proposed LATA configuration is the best we can make by using the available data. The PSCWV will supplement our Comments if the data needed to make a more thorough analysis becomes available during the course of the proceeding.

The PSCWV also respectfully requests that these Comments be read in conjunction with the Comments filed with this Court by the PSCWV on March 18, 1983, in Civil Action No. 82-0192, *United States* v. *Western Electric Company, Inc.* and *American Telephone and Telegraph Company* (hereinafter referred to as the "AT&T LATA case") concerning the character of Bell-Independent Traffic. A review of the response of the United States and AT&T to the PSCWV's March 14, 1983 Comments will also be helpful to this Court.[1]

II. The Exchanges Which GTE Associated With the Bell Operating Company Clarksburg, West Virginia, LATA Should be Associated With the Hagerstown, Maryland, LATA

In its filing, GTE associated its Augusta, Burlington, Fort Ashby, Levels, Maysville, Moorefield, Paw Paw, Petersburg, Romney and Wardensville exchanges with the Bell Operating Company's (hereinafter "BOC") Clarksburg LATA. This assignment was based on the present toll facility configuration which homes these exchanges on the Clarksburg Class 4 switch. The Chesapeake and Potomac Telephone Company of West Virginia (hereinafter "CPWV"), however, in its October 4, 1982 filing with this Court in the AT&T LATA case, assigned its Keyser and Piedmont exchanges to the Hagerstown, Maryland LATA, even though these Class 5 offices presently also home on Clarksburg, because of its plans to rehome these offices to the Cumberland, Maryland Class 4 office. Since, almost exception, the traffic from the aforementioned GTE exchanges is directed toward either Keyser, Piedmont or Maryland exchanges in the Hagerstown, Maryland LATA, these GTE exchanges should not be permanently associated with the Clarksburg LATA. They should be assigned now to the Hagerstown, Maryland LATA instead of the Clarksburg LATA. In the alternative, this Court should allow sufficient flexibility to allow a change in LATA association for these exchanges when the network is reconfigured.

Attached as Exhibit No. 3 to these Comments are toll studies showing the calling volumes from the GTE exchanges mentioned herein. An examination of these shows that in most cases the five most frequently called points from each exchange are either other nearby GTE exchanges or are exchanges located in the Hagerstown, Maryland LATA. The extremely high toll volumes of 8.18 calls per main per month from Burlington to Keyser and 7.55 calls per main per month from Fort Ashby to Cumberland, Maryland unquestionably support inclusion of these communities, at this time, in the Hagerstown, Maryland LATA.

The extremely high community of interest between GTE's Ft. Ashby exchange and the Hagerstown, Maryland LATA is further demonstrated by a formal complaint presently pending before this Commission as WVPSC Case No. 83-117-T-C. The PSCWV also believes that this complaint can be resolved much more easily if Ft. Ashby is involved within the Hagerstown LATA. A copy of this Formal Complaint is attached as Appendix 4 to these comments.[2] A letter from GTE to the PSCWV, dated June 22, 1983, (attached as Appendix 5 hereto) also addresses the importance of the inclusion of Ft. Ashby in the Hagerstown, Maryland LATA.

The cost of rehoming these exchanges should be borne by AT&T since the need for rehoming was precipitated by AT&T's Modified Final Judgment. Moreover, AT&T is responsible for these exchanges being the rehomed and included in the Hagerstown, Maryland, LATA. This in consistent with this Court's decision dated July 8, 1983, Civil Action No. 82-0192 at pages 18-20, where it ultimately held AT&T liable for the costs of network configuration. Furthermore, the cost of rehoming the exchanges which costs approximately $1,000,000 can be much more easily absorbed by AT&T than by GTE's West Virginia operations.

Respectfully submitted,
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[1] See Response of the United States to Public Comments and Action on BOC determination concerning the intra-LATA or inter-LATA character of Bell-Independent Traffic dated April 4, 1983, at page 20 attached as Appendix 1 and Response of The Chesapeake and Potomac Telephone Companies to Comments addressed to their classification of Bell-Independent Traffic dated March 25, 1983, attached as Appendix 2.

[2] Since in its Comments both the Department of Justice and AT&T (CPWV) did not disagree with the PSCWV's assignment of the aforementioned exchanges to the Hagerstown, Maryland LATA, these exchanges are probably already included in that LATA under the terms of this Court's order in the AT&T LATA case, dated July 8, 1983, at page 130, fn 24.

July 22, 1983.

U.S. District Court for the District of Columbia

United States of America, Plaintiff, v. *GTE Corporation*, Defendant; Civil action No. 83-1298.

Response of the United States of American to Comments Filed Pursuant to the Antitrust Procedures and Penalties Act

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act"), the United States respectfully files the following response to the comments received from the public on the proposed final judgment in this civil antitrust action.[1]

Eight comments were received. MCI Telecommunications Corporation ("MCI") and an individual correspondent opposed the entry of any judgment that would allow GTE Corporation to offer interexchange telecommunication services other than those it currently offers in conjunction with American Telephone & Telegraph Co. ("AT &T"). Two other commentors, the State of Hawaii and Satellite Business Systems ("SBS"), primarily requested clarification, explanation or amplification of certain terms of the judgment.[2] The remaining commentors, the State of Michigan an American Information Technologies Corporation ("Ameritech"), filed comments in support of the entire proposed judgment or relevant elements of its proposed implementation.[3]

[1] On May 4, 1983, the United States filed its complaint in this case. The United States simultaneously filed a proposed consent decree, which if entered by the Court, will conclude this action, and a competitive impact statement ("CIS") describing the events giving rise to the alleged violation and explaining the terms and competitive effects of the proposed final judgment. As required by the Tunney Act, a summary of the terms of the proposed final judgment was subsequently published in the Washington Post on May 12-18, 1983, and the complaint, proposed final judgment, and CIS were published in the FR 48 Fed. Reg. 22020 (May 16, 1983). (Hereafter, the proposed final judgment in this case is sometimes also referred to as the "proposed decree", and the CIS in this case is referred to as the "GTE CIS".) Under the Act, the period for public comment continued until July 15, 1983. *See United States* v. *GTE Corporation*, Civil No. 83-1298, Slip Op. at 1 (D.D.C. June 10, 1983).

[2] The State of Hawaii, however, took the position that the Court should not enter the proposed decree until these clarifications had been made.

[3] Subsequent to the comment period, AT&T filed a comment noting its interest in the matter and requesting permission to participate in any later proceedings, and the State of West Virginia filed comments directed solely to possible reconfigurations of GTE's existing facilities. MCI also stated that it may make further filings concerning the GTE exchange areas. As discussed below, whether such additional proceedings are warranted, after the Court has essentially

Continued

The Department has reviewed and evaluated all the comments submitted in order to determine whether, as permitted by the stipulation between the United States and GTE, it should withdraw its consent to the entry of the proposed judgment. The Department continues to believe that entry of the proposed judgment is in the public interest.

I. Legal Standards Governing the Court's Public Interest Determination

It is well established that the Department of Justice has broad discretion in controlling government antitrust litigation, including negotiating and agreeing to consent decrees in the settlement of civil antitrust laws. *See Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 689 (1961); *Swift & Co. v. United States*, 276 U.S. 311, 331–32 (1928). This discretion is essential to effective enforcement of the antitrust laws, because the vast majority of government antitrust actions are resolved through the consent decree process. The Tunney Act reaffirms the long-standing equitable rule that the Court is to provide an independent "check upon the government's good faith and expertise" by conducting procedures to help it determine whether a negotiated decree is in the public interest. *United States v. Morgan Drive Away Inc.*, 1976–1 Trade Cas. (CCH) ¶ 50,949 at 69,151 (D.D.C. 1976). Although the Tunney Act provides a number of specific factors that a court may consider in making its determination, 15 U.S.C. § 16(e) (1) and (2), the fundamental public interest question is "[w]hether the relief provided (in a proposed judgment) is adequate to remedy the allegations of antitrust violation as set out in the complaint." *United States v. Bechtel*, 1979–1 Trade Cas. (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981).

The consent decree process normally entails compromise: each party generally concedes something which it might otherwise have won. *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971) *United States v. Mid-America Dairymen Inc.*, 1977–1 Trade Cas. (CCH) ¶ 16,508 at 71,980 (W.D. Mo. 1977). Thus, a negotiated consent decree may be in the public interest even if, after prevailing at trial, the United States might have been awarded different or additional relief. As this Court has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment, and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preseved.

United States v. Western Electric Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (hereafter *"AT&T (Decree)"*).[4] *As the Ninth Circuit observed in affirming Bechtel,*

> "[t]he court's role in protecting the public interest is one of ensuring that the government has not breached its duty to the public in consenting to the decree." *United States* v. *Bechtel Corp.*, 648 F.2d at 666.

II. GTE's Ownership of Exchange and Interexchange Companies

The proposed final judgment permits GTE Corporation to acquire the "Sprint" interexchange services formerly owned by Southern Pacific Company.[5] The Department believes the proposed decree represents a compromise which is in the public interest. As MCI correctly points out, the essential compromise of the decree is that the Department does not oppose the acquisition itself. In return, however, the Department obtained concessions which we believe not only effectively constrain GTE's ability to act anticompetitively, but also represent significant achievements in the creation of a more competitive environment in the telecommunications industry. The decree imposes strict structural separation between the regulated, monopoly GTE Operating Companies ("GTOCs") and the acquired unregulated interexchange carrier. Thus, even the basic compromise was carefully conditioned by structural barriers.[6] In addition to these structural limitations, the proposed decree imposes other significant obligations on GTE. It should be emphasized that the combination of a cap on and mandated phase-out of GTE's "partnership" with AT&T contained in Section V, the clear definition of equal exchange access, the imposition of a definite schedule for the provision of equal access, and the other injunctions contained in the decree, together constitute important steps toward the goal of a fully competitive telecommunications industry.

MCI's criticism of the Department's settlement uses the *AT&T* decree as a model. While that decree is indeed an appropriate model, the factual context of this case leads the Department to believe that the proposed decree is in the public interest as a negotiated, non-litigated resolution of the lawsuit.[7] As the Department stated in the GTE CIS, *AT&T* dealt with a situation in which the intercity enterprise served every one of its commonly-owned local monopolies, which together accounted for over 80% of the nation's telephones, and in which the local and intercity enterprises were served by a network characterized by predominantly common costs. In contrast, the instant case deals with two companies which have no previous relationship, no history of common costs (as well as a decree which prohibits

concluded its review of the Bell Operating Companies Local Access and Transport Areas ("LATAs") and the related "associations" of the operating areas of the independent telephone companies (including GTE) in the related proceedings in the *AT&T* case is open to question. *See United States v. Western Electric Co.*, Civ. No. 82–0192, D.D.C. (July 8, 1983) (hereafter *"AT&T (LATAs)") and id.*, (August 5, 1983).

[4] Several commentors suggest that the procedures utilized in the proceedings relating to the Modified Final Judgment in the *AT&T* case ("*AT&T* MF]") be grafted onto the present proceedings. In addition, several of the comments, including those of the State of Hawaii, suggest that the Court should *sua sponte* modify the proposed judgment to impose additional conditions. State of Hawaii at 5, 23–24. Hawaii suggests that the Court should incorporate into the decree certain conditions imposed by the Federal Communications Commission in its July 1, 1983 order approving the acquisition, and impose other conditions (such as a "plan for reorganization") that are neither required by nor consistent with the proposed judgment. The Department strongly disagrees with the implicit assumption of Hawaii that the Court may alter the terms of the proposed judgment without the consent of the parties. *See United States v. AMPI*, 394 F. Supp. 29, 42 (W.D. Mo. 1975); *see also AT&T (Decree)*, 552 F. Supp. at 151–53. As the Court made explicit in *AT&T (Decree)*, it was the peculiar posture of the MF] proceeding that required "that the decree . . . receive closer scrutiny than that which might be appropriate . . . in a more routine antitrust case." *Id.* at 153.

[5] Prior to the acquisition, these services were marketed under the name "Sprint" by Southern Pacific Communications Company, a subsidiary of Southern Pacific Company. The proposed decree also permits GTE to acquire Southern Pacific Company's other telecommunications subsidiary, Southern Pacific Satellite Company. This company is authorized by the Federal Communications Commission to launch and operate a domestic satellite communications system, a part of which was intended for use in providing Sprint services. Throughout the proposed final judgment, in contemplation of the change in corporate affiliations, the term "acquired entities" is used to refer to all these assets and enterprises acquired by GTE from Southern Pacific Co. See Proposed Final Judgment ¶ II(A), 48 FR at 22021. The services of the acquired entities are now offered by "GTE Sprint", as permitted by the proposed decree. For ease of reference, the acquired entities are referred to as "Sprint" throughout this response.

[6] The structural aspects of the decree, contained in Section IV, are explored in greater detail below.

[7] From a pragmatic standpoint the Department is no different from any other litigant in weighing a potential negotiated settlement, and so must balance the content of a definite and immediately-obtainable settlement against the uncertainty and delay inherent in litigation.

common costs in the future), an intercity carrier currently serving barely 1% of the nation's phones, and one with virtually no presence in cities served by GTE.

MCI argues, again from the *AT&T* model, that a ratebase-regulated local monopoly exchange carrier will have the incentive and ability to favor its commonly-owned intercity carrier. This theory is correct, and was the basis of both the *AT&T* and the present lawsuits. As the Department stated in the GTE CIS, "[t]he potential for abuse of monopoly power over exchange access and for evasion of regulatory constraints underlies the present action and the proposed Final Judgement."[8] The present proposed decree, however, must be seen in the factual context of this case.

GTE's incentive to favor Sprint stems from, and is dependent upon, a net increase in revenues to be realized from monopolization by Sprint of intercity telecommunications to and from each city served by one of its GTOCs. Under the present facts, however, monopolization by Sprint of traffic in and out of a GTOC city requires the diversion of that traffic from the partnership. Thus in calulating the incremental revenue effects of the diversion, GTE must look at both the foregone partnership revenues and the additional Sprint revenues (as well as many other factors). GTE must also keep in mind that any such diversion will be readily detectd by AT&T, which would be free to retaliate by cancelling the partnership agreement in whole or in part. This would leave GTE immediately with a significant stranded partnership investment (most notably its Class 4 switches).[9] Thus, diversion of any partnership traffic in any market raises the possibility of losing not just the partnersphip revenues related to that traffic, but all partnership revenues, and also raises the possibility of imposing on GTE the cost of the stranded partnership investment. Calculating its incentives under these conditions, it seems more likely that GTE will perceive its net incentive is to continue favoring the parthership, rather than Sprint.

MCI recognizes the existence of GTE's present incentive to favor the partnership by pointing out the preferential interconnections afforded the partnership by the GTOCs, which match those afforded the partnership by the BOCs. Nonetheless, MCI fails to acknowledge that the incentive to favor the partnership presently outweighs the incentive to favor Sprint. MCI also fails to recognize that the proposed decree neither creates the incentive to favor the partnership nor enhances it. In fact, Paragraph V(C) of the proposed decree strikes directly at that incentive by capping GTE's partnership investment at its present level, and requiring that that investment be phased out. In addition, the decree mandates the phase-in of full equal access for all carriers, thus seeking to eliminate GTE's ability to favor the partnership in the type, quality or price of interconnections granted.

At some point in the future, GTE's incentive to favor Sprint will likely predominate over its current incentives to continue favoring the partnership. By that time, however, the GTOCs will have in place switching and software technology capable of providing the equal access mandated by the decrees, pursuant to the obligations imposed by Section V and Appendix B. The GTOCs' adherence to the decree's equal access standards will then be judged not only against the requirements of the proposed decree, but also against two other benchmarks as well: one provided by the BOCs (freed of contrary incentives by the *AT&T* divestiture) and another provided by the conduct of the GTOCs in cities not served by Sprint. While some risks to competition will remain, the Department's right to seek divestiture under Section VII will both provide for full relief in case the GTOCs do discriminate against Sprint's rivals as well as decrease GTE's incentives to have the GTOCs so discriminate.

As the Department explained in the GTE CIS, the proposed decree "is designed to circumscribe GTE's ability, through cross-subsidization or discriminatory actions, to leverage the power the GTOCs enjoy in their regulated monopoly markets to foreclose or impair the development of competition in the related markets for the provision of interexchange telecommunications services and information services."[10] The corporate and operational separation obligations of Section IV of the Judgment place a clear structural impediment to anticomptitive cross-subsidization by prohibiting virtually all common costs. The requirement that the GTOCs provide "equal exchange access" to all interexchange carriers[11] seeks to preclude anticompetive discrimination and the provisions of Paragraph V(C) remove whatever lingering incentives the GTOCs may have to favor the "partnership" with AT&T. Thus, on balance, in the context of a consent decree, the proposed judgment entails a reasonable remedy for the violations alleged in the complaint, and, in its interconnection mandates and partnership provisions, provides some significant competitive benefits, continuing the transition to a competitive interexchange telecommunications industry begun in the AT&T case.

Significantly, MCI ignores the fact that the proposed judgment in this case in no way impedes the ability of the Department or of the Court to insure that the structural result of the acquisition does not engender any anticompetitive consequences. To the contrary, Paragraph VII(B) of the proposed decree provides that

> [u]pon application to this Court by the United States to enforce compliance with this Final Judgment, the Court may grant further relief, including but not limited to divestiture of the acquired entities or, at the election of GTE, divestiture of the GTOCs, if (1) GTE is found to have engaged in a pattern of substantial violations of Section IV Section V, or Appendix B of this Final Judgment, or (2) any GTOC is found to have violated Section IV, section V, or Appendix B of this Final Judgment in a manner that materially injures interexchange carriers or information service providers in their ability to offer services competitive with those offered by GTE or the acquired entities.

48 Fed. Reg. at 22024. Violation of the terms of the proposed judgment, whether independently constituting an antitrust violation or not, is thus a ground for the divestiture of either GTE's Sprint operations or its local operating companies. Furthermore, the proposed judgment does not bar any later action by the United States under § 2 of the Sherman Act. In short, should the modified structural and injunctive behavioral relief provided by the judgment prove inadequate, the Department can act, under the terms of the judgment or under the Sherman Act, to implement the ultimate structural remedy imposed on AT&T. Meanwhile, the efficacy of the various injunctive provisions of the judgment can be tested against the objective benchmarks of the practices of the divested BOCs and of the GTOCs in cities not served by Sprint.

[8] GTE CIS at 5, 48 Fed. Reg. at 22027.

[9] The cancellation of the partnership agreement would also deprive GTOC customers in most locations of interexchange services, since the Sprint network is available to very few GTOC subscribers while the partnership network is available to all of them.

[10] GTE CIS at 9, 48 Fed. Reg. at 22027.

[11] Proposed Final Judgement ¶¶ V(A), V(B), and Appendix B, 48 Fed. Reg. at 22023, 22025–26.

MCI also raises three specific types of anticompetitive conduct which it asserts are possible consequences of the acquisition: discrimination by the GTOCs in favor of Sprint, and against the remaining carriers; cross-subsidization of Sprint by the GTOCs; and collusion between GTE and AT&T.

Discrimination by the GTOCs

Having already addressed GTE's incentives to discriminate, we turn in further detail to the proposed decree's provisions circumscribing GTE's abilities to act on those incentives. Fundamentally, GTE has the ability to discriminate in favor of Sprint only in those GTOC-served cities that are also served by the Sprint network, currently nine cities.[12] Thus, even with substantial investment in the Sprint network, it will be some years before Sprint serves enough GTOC cities that the increase in revenues to be gained from preferential treatment of Sprint becomes sufficient to make that course of action attractive. During this same period of time, however, the GTOCs will have installed switches capable of serving all interexchange carriers equally at the GTOC cities most likely to be served by competitive carriers. Thus, by the time discrimination in favor of Sprint becomes financially attractive to GTE, that discrimination will also be easier to detect. Moreover, because the BOCs control over 80% of the nation's telephones, deviation from their interconnection practices should serve as an objective standard by which the GTOCs' practices can be measured, since the BOCs, associated with no interexchange carrier, will have no incentive to discriminate.

Finally, it must be recalled that in the *AT&T* case, the interconnection arrangements between the associated local and interexchange carriers antedated the entry of competing carriers, thereby making the task of defining discrimination more difficult. *GTE* presents a quite different situation: in this instance the definition of equality among all carriers arises in a situation in which there are competing voice-grade interexchange carriers, of which Sprint is the third largest.[13] Hence, GTOC conduct favoring Sprint over its competitors should be more readily detectable.

In addition to the equal access provisions themselves, there are additional provisions circumscribing GTE's ability to discriminate in favor of Sprint. One is the requirement of strict organizational separation between GTE's competitive enterprises (including Sprint) and the GTOCs set forth in Section IV. The basic tenet of that Section is set forth in Paragraph IV(A): "GTE shall maintain total separation between the acquired entities and GTE . . ." The section then continues at length to detail that separation. There can be no common lines of authority (other than the chief executive and chief operating officers of GTE) [14] between the two operations. These provisions also prohibit the kind of routine, informal, daily contacts to transact business between Sprint and the GTOCs that would constitute the most invidious discrimination, which would also be the most difficult to detect.

Each of the hypotheticals posed by MCI in its comments would violate one or more provisions of the proposed judgment. For example, the GTOCs' dealings with Sprint, as with AT&T and all other carriers, must be on an arms-length basis. Sprint, and all other carriers, must obtain access by tariffs which are uniformly applicable. The GTOCs cannot own any facilities in common with Sprint. Any other services which the GTOCs provide Sprint must be under tariff. And any Sprint purchases from other GTE enterprises must be at prices no more favorable than those offered to the GTOCs. Proposed Final Judgment ¶¶ IV(A)(1)–(7), V(A)–(C), 48 Fed. Reg. at 22022–24.

Cross-Subsidies

There is an inherent incentive for GTE to cross-subsidize from its regulated operations into its competitive services. No decree which permits the integration of regulated and unregulated operations, can entirely eliminate such an incentive. As explained in the Department of Justice Response to Public Comments, in *United States* v. *Western Electric Co.*, Civ. No. 82-0192 (D.D.C.), 47 FR 22320 (May 27, 1982) (hereafter "Justice MFJ Response"), the problem of cross-subsidy is inherently insoluble where both competitive and regulated services are offered over jointly owned or operated facilities, because

> there is simply no single correct formula for the allocation of . . . common costs among services. Moreover, even if such a formula existed, the possession by the BOCs of relevant cost information, the extent of common costs, and the high decree of discretion in the treatment of such costs . . . would very likely frustrate meaningful regulatory oversight. . . .

47 FR at 23336.

However, the proposed decree is designed substantially to eliminate the ability to carry out such cross-subsidies in this particular factual context. As mentioned in the preceding discussion, Section IV flatly requires that "GTE shall maintain total separation between the acquired entities and GTE. . . ." Thus, this section of the proposed decree not only cuts off overt and subtle avenues of integration in the operations of the GTOCs and Sprint, but also eliminates virtually all possibility of common costs between them. the GTOCs and Sprint are barred from utilizing common facilities. And with the exception of some very limited overhead administrative and research expenses (which must be reported to the Department),[15] the decree's virtual preclusion of common costs thus avoids the complex problems of cost allocation. Similarly, Paragraph IV(A)(4) eliminates another form of common costs by prohibiting the GTOCs or GTE's Telephone Operations Group from "directly or indirectly provid[ing] any administrative, research and development, or similar services to the acquired entities", or receiving such services from them.[16] The judgment's mandate of "total separation" between the competitive and regulated services thus effectively removes GTE's ability to integrate Sprint into its existing regulated operations. By precluding integration, the judgment removes the basic avenue through which integrated firms, such as AT&T, have traditionally been able to cross-subsidize without detection.

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[12] Sprint currently serves only ten markets in which a GTOC is a local exchange provider: Ontario, San Bernardino and Santa Barbara, California; Tampa, Florida; Honolulu, Hawaii; Fort Wayne, Indiana; Lexington, Kentucky; Durham, North Carolina; and Erie and York, Pennsylvania. (SPCC Tariff No. 9) While for each of these, GTE could have the ability to preferentially route interexchange traffic over Sprint, some investment and time would be required to make the necessary rearrangements in interconnections. This rearrangement of interconnections would be readily detectable, since it would substantially change the quality of interconnection received by AT&T.

[13] According to the statistics provided by MCI, AT&T retains approximately 95% of the business; MCI provides 3% of the service; and Sprint provides 1%. MCI at 9. The MCI statistics do not include the revenues of SBS or other firms engaged in providing private line service, or of resellers utilizing private networks.

[14] The more subtle forms of discrimination would require integrated operations at the lowest levels of the corporate structure, which is strictly barred.

[15] GTE CIS at 12 n. 3, 48 Fed. Reg. at 22028 n. 3. Generally, administrative and research expenses not related to a specific function are allocated among all GTE subsidiaries in proportion to revenues. Those which are related to a specific function must be allocated to that subsidiary. Deviation from this formula should be detectable.

[16] The term "administrative" is used in its broadest sense, and includes such items as common buildings, trucks, garages, warehousing, and other supply-related facilities.

MCI misses the mark in disregarding the significance of the fact that Sprint is not currently integrated with the GTOCs, MCI at 37–38, and of the bar to such future integration. Prior to the acquisition, GTE and Sprint, by definition, had no integration and no common costs between them. The decree prohibits virtually every hypothetical form of integration and cross-subsidization which MCI has posed.[17] Thus, the risks of cross-subsidization should be substantially eliminated.

Collusion with AT&T

MCI also asserts that the decree facilities a future pattern of collusive conduct between GTE and AT&T. Apparently in support of this theory, MCI alleges that GTE paid a $500 million "premium" to purchase Sprint, thus leaving MCI as the only "independent" carrier.[18]

To the extend that this collusion would stem from or depend upon GTE's partnership with AT&T, the proposed decree does not create or enhance the possibility; to the contrary, it provides significant relief. The proposed decree mandates that the GTOCs withdraw from jointly providing facilities for interexchange traffic with AT&T. Thus, under the proposed decree, the partnership will diminish in importance as a motivating force for GTE conduct, while at the same time other obligations and changes in the industry will facilitate the detection of collusion.[19]

Finally, the proposed decree would permit further relief, and the antitrust laws are available, should such collusion occur.

III. Specific Provisions of the Proposed Decree

Equality of Access

MCI suggests that the proposed decree will not "result in real equal access." MCI at 44; *see also* SBS at 5. SBS suggests, *inter alia*, that the proposed decree should require in detail the manner by which the GTOCs will meet their equal access requirement. SBS at 5–7. These criticisms are essentially identical with comments received concerning the *MFJ*. *See* Justice MFJ Response, 47 FR at 23344–49. The Department, however, continues to believe that the GTOCs under this proposed decree, like the BOCs under the *AT&T* decree

> will be in a better position than the Department or a court to establish the most efficient configuration of switching and transmission facilities in a given exchange area to provide exchange access equal in type and quality to that provided AT&T. Depending on the nature of the local network, there may be several ways of configuring connecting arrangements to provide all carriers equal access. * * * Thus, the [decree's] . . . only requirement is that actual equality between competing carriers be achieved.

Id., 47 FR at 23344–45.

This approach, incorporated from the *AT&T* MFJ, was previously approved by this Court as "adequate to protect the public interest". *AT&T (Decree)*, 552 F. Supp. at 197. As SBS correctly observes, the proposed decree does not mandate that the GTOCs utilize their class 4 capacity to provide equal access. Rather, it provides the GTOCs with a series of options concerning both the future utilization of their class 4 capacity, and the manner in which they will achieve equal access.[20] It is not the intention of the proposed decree, nor is it in the public interest, to force GTE to incur substantial expense to offer equal access in a manner that would not be efficient.

The Equal Access Schedule

1. Equal Access Through Electronic Stored Program Control Switches

MCI's principal objection to the judgment's access provisions relates to the timing of equal access. MCI at 44–47. SBS also questions the length of time allowed for the GTOCs conversion to equal access. SBS at 9–11. These complaints essentially parallel comments filed during the MFJ proceeding.[21]

In fact, the schedule imposed on the GTOCs by this decree is not less strict than the terms of the MFJ. The MFJ requires that the BOCs commence equal access no later than September 1, 1984. This allows the BOCs to first offer equal access 32 months from the filing of the modification and 24 months from its entry. The proposed decree mandates that the GTOCs shall begin to offer equal access no later than January 1, 1985, only 18 months from the filing of the proposed judgment and just four months after the first BOC obligation. The MFJ mandates that equal access shall be available at all BOC electronic end office switches by September 1, 1986; the proposed decree requires the GTOCs to achieve the identical result by September 1, 1987. Thus, while GTE agreed to a decree sixteen months later than did AT&T, it must achieve the equal access result only twelve months later than the BOCs, despite AT&T's vast superiority in resources.[22]

GTE must ensure that over two-thirds of all GTOC access lines are capable of providing equal access by September 1,

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[17] For example, because all services provided by a GTOC to Sprint must be provided by tariff or contract uniformly available to all carriers (including "maintenance, transportation and warehousing", MCI at 54), Sprint cannot have the advantage of "bargain rates". MCI also poses the possibility that the GTOCs could levy excessive access charges, thereby creating a "slush" fund for indirect return to Sprint. This, of course, would enhance the bypass threat from AT&T, MCI and others, and so might well be self-defeating if it lowers GTOC revenues.

[18] *See* MCI at 3. Of course, although MCI has the greatest revenues of all OCCs, it is far from the only other carrier in the field. For example, SBS also provides MTS/WATS type services in competition with AT&T, MCI and Sprint, as do U.S. Telephone Systems and Western Union. Dedicated private line services are provided by an additional group of carriers, including CSAT and RCA. Furthermore, resale carriers which formerly only used AT&T and OCC facilities have begun to lease portions of microwave and satellite capacity owned by other enterprises, intending to create networks which are largely independent of any of the existing carriers.

[19] Nor is the MCI citation to the initial FCC *Telenet* decision persuasive. MCI quotes from the Commission's decision imposing conditions upon the GTE-Telenet acquisition in 1979 as evidence of its cartel theory. MCI at 57. However, the Commission returned to that topic in its 1982 opinion removing these conditions:

> The Commission's principal concern in the merger proceeding was that a merged Telenet would not compete with any advanced communications offering of AT&T. GTE's incentives to reach an anti-competitive accomodation arise from GTE's role as a partner with AT&T in the provision of toll services. * * * However, since 1978, the facts indicate that GTE is no longer motivated to accommodate AT&T. Telenet has grown into a major competitor in the flourishing enhanced services filed and it is well positioned to compete with other enhanced service vendors.

GTE Telenet Monitoring, 91 FCC 2d 215 (1982). *See also Application of GTE Corp. and Southern Pacific Co. for Consent to Transfer Control of Southern Pacific Communications Co.*, No. ENF–83–1, FCC 83–269, Order Approving Acquisition (July 1, 1983) (hereafter "FCC Order Approving the Acquisition").

[20] Regardless of the options chosen, the GTOCs must achieve equal access, and so are barred from disposing of any assets necessary to fulfill this requirement. *See, e.g.*, Proposed Final Judgment ¶ V(C)(2), 48 FR at 22023.

[21] *See* Justice MFJ Response, 47 FR at 23348.

[22] In calendar year 1979, the GTE Laboratories total budget was $32.2 million, as contrasted with the Bell Laboratories budget of $1,065.6 million. While over 45% of the Bell Labs budget is allocated to research on telecommunications projects for the use of AT&T interexchange and exchange services, the GTE Laboratories research efforts are apparently more diversified, and have provided less support to its telecommunications enterprises. The manufacturing elements of the two firms are likewise vastly different in resources: in 1979, Automatic Electric had assets of $722.0 million, and sales of $1,237.8 million; Western Electric had assets of $7,062.2 million, and sales of $10,500.5 million. *See* General Telephone & Electric Co., *Data on Manufacturing, Supply, Directory & Service Affiliates for the Year 1979*, 60–67 (1980); American Telegraph & Telephone Co., *Bell System Statistical Manual: 1950–1980*, 1304, 1307, 1311 (1981); American Telephone & Telegraph Co., *Facts About Bell Labs*, 7, (1977).

1987. As the Department commented on the parallel provisions in the MFJ:

The . . . issue is whether the phase-in period for provision of equal access is reasonable in view of the need to make changes in the network to offer such services. The provision of access required by the modification requires the reprogramming of existing stored program controlled switches to offer the enchanced interconnection arrangements, and the replacement of existing electromechanical switches with electronic equipment capable of providing equal access features. The Department believes that the time period permitted will provide proper incentives . . . to produce equal access expeditiously, but will not result in the wasteful expenditure of resources that might be required to accomplish the task in a much shorter period of time.

Justice MFJ Response, 47 FR at 23348–49. The Court's conclusion in the MFJ that such a transition period was "reasonable and not inconsistent with the public interest" is equally applicable to this case. *AT&T (Decree)*, 552 F. Supp. at 196.

It must also be remembered that, as in the MFJ, the equal access implementation schedule in the proposed decree specifies the latest permissible date at which specified access criteria are to be met, including dates at which specific types of switching equipment are to have equal access programs available. These dates reflect the commitments which GTE has received concerning equal access program availability. Although manufacturers (including GTE's own manufacturing subsidiary, Automatic Electric) [23] may have been reluctant to provide assurances of earlier equipment availability, GTE has significant incentives, and in fact an obligation, to advance this date, contrary to the assertion of MCI. MCI at 46. If the necessary software and hardware are available earlier, the proposed judgment requires that equal access also be available earlier, since it requires that equal access facilities be made available "as promptly as possible". *See* Proposed Final Judgment, Appendix B ¶ A(1), 48 FR at 22025.[24]

2. Provision of Interim Enhanced Interconnection Arrangements

The Department understands that interim arrangements, perhaps including some arrangements such as MCI's Sugar Land project, may enhance the interconnections of interexchange carrier prior to equal access. Both MCI and Sbs imply that such arrangements should be mandated within the proposed decree. MCI at 45–47; SBS at 6. The Department has continued in this case the approach which the Court found to be in the public interest in the MFJ: it has established reasonable deadlines by which MCI and other carriers, including Sprint, will achieve parity of access with the AT&T interexchange traffic, leaving any interim arrangements to the negotiations of interested interexchange and exchange carriers. Insofar as such arrangements are technically and economically feasible, without delaying the implementation of full equal access, their provision by the GTOCs would certainly be consistent with the proposed decree.[25]

The Step-by-Step Switch Provisions

Two provisions of the proposed decree relate to step-by-step ("SXS") switch technology, that is, technology antecedent to the electronic switches currently deemed capable of furnishing equal access. These provisions mandate (a) that all SXS switches serving more than 10,000 access lines be replaced, and (b) that GTE furnish the best available form of access available from the remainder of the SXS switches, prior to their replacement, unless economically infeasible. Commentors MCI and SBS appear to have generally misunderstood these provisions.

1. Obligation to Replace SXS Switches

The GTOCs are obligated under the decree to replace all SXS switches at end offices serving greater than 10,000 lines no later than December 31, 1990. Proposed Final Judgment, Appendix B ¶ A(1)(c), 48 FR at 22025.[26] Commentor SBS correctly recognizes that this obligation requires the retirement of a substantial number of existing SXS switches, and their replacement with electronic switches, but believes that the obligation should be more explicit. SBS at 7–8. The provisions of the decree mandate, and the Department and GTE clearly contemplate, that such replacements be accomplished within the time periods set forth in the decree, i.e., meeting both the two-thirds of all access lines deadline of September 1, 1987, and the 10,000 acess line deadline of December 31, 1990.

2. Switches Serving Fewer than 10,000 Access Lines

As does the MFJ, the proposed decree accepts that switch technology such as the SXS is apparently technically incapable of providing full equal access. The proposed decree permits the GTOCs to engage in a phased replacement program for its SXS technology without supervision under the decree, [27] except, of course, where

[23] SBS suggests that equal access schedule could be advanced were GTE to acquire the necessary hardware and software from Western Electric Company. It is the Department's understanding that software is not interchangeable between analogous, but different, switches produced by the same manufacturer, much less by different manufacturers. Moreover, such software is proprietary, and Western Electric and Automatic Electric will compete to provide switches to the BOCs and GTOCs containing features reflected in the software. Hence, even if such software were interchangeable, as SBS suggests, there is no basis to assume that it would be available to Automatic Electric.

[24] In its comments, MCI suggests that its own experience with "equal access" from an Automatic Electric-manufactured switch at the Sugar Land Telephone Company demonstrates that a more prompt schedule is feasible. From the information available, however, the Department believes that the Sugar Land arrangement is not the equivalent of the equal access mandated by the decree, and may not be readily transferrable to other sites. Generally, the Sugar Land arrangement provides for ENFIA–A type interconnections for MCI customers located in the southern sector of the Houston SMSA. Under the Sugar Land arrangement, approximately 600 MCI customers who are directly served through one of Sugar Land's five exchange switches receive a "10XX" access to MCI, and direct billing from Sugar Land. This is accomplished through an ENFIA–B type interconnection at that switch, and a separate agreement between Sugar Land and MCI under which the former provides MCI a monthly ticketed billing tape, which MCI in turn rates and returns to the company for its billings. The remainder of the MCI customers in the Sugar Land franchise area, and the MCI customers in the adjoining areas served by the MCI Sugar Land switch, are required to use the "7D+PIN+10D" access format, and are separately billed by MCI. Because the "equal access" has no access-tandem arrangement (as would be mandated by both the MFJ and the proposed decree), it is available to less than half of the Sugar Land access lines, and less than 10% of the total MCI subscriber base using the MCI terminal located at Sugar Land.

[25] Under the bar against discriminatory interconnections, the proposed decree prohibits any GTOC from concluding interim arrangements with Sprint for enhanced interconnections which it does not offer to all other carriers.

[26] MCI states that this provision allows the GTOCs to avoid providing equal access at end offices serving less than 10,000 lines, regardless of the switch technology in place. *See* MCI at 45 ("GTE need not provide equal access at end offices serving 10,000 or fewer lines"). To the contrary, the decree expressly contains two separate requirements: (1) the GTOCs must furnish equal access through any central office with an electronic switch no later than the dates specified in Appendix B, ¶ A, *and* (2) all end offices serving 10,000 or more lines must have electronic switching by December 31, 1990. Thus, if a GTOC end office serving 5,000 access lines is presently using a DMS switch for which an equal access software package is available, the GTOC must offer equal access features no later than January 1, 1985, because the equal access capacity is already available at that location: an end office serving 10,000 access lines with a SXS switch must install a stored program control switch capable of equal access no later than December 31, 1990 to offer equal access.

[27] In its proceeding in Docket 78–72, the FCC could impose obligations relating to smaller and SXS switches.

that technology serves more than 10,000 access lines. This provision differs from the parallel provision of the MFJ in that the GTOCs are relieved from providing equal access through end offices which serve fewer than 10,000 lines with SXS technology, and need not seek waivers from the Court, as the BOCs must do under the MFJ.

Simultaneously, however, the GTOCs are required by the proposed judgment to develop, if feasible, improved means of interconnection for carriers with these SXS switches, until they are all ultimately replaced. Proposed Final Judgment, Appendix B ¶ A(4), 48 FR at 22025. This "trunkside" provision, which SBS suggests is unreasonably nebulous, is deliberately flexible: it is directed to technological methods which may become feasible in the future, but are currently unknown. It is the Department's view that, particularly at the so-called "semi-intelligent" or "directional" SXS switches, forms of remote units or patches may be feasible which would permit forms of interconnection at least improving upon the current ENFIA–A access. However, the Department recognizes that given technological uncertainty, it would be unwise to direct that future research and development for this conversion be committed along any one path.

IV. Issues Raised by Hawaii

The State of Hawaii expresses concern regarding several areas in which the proposed judgment would affect telecommunications services used by the State's residents. In particular, the State requests clarification regarding the provisions of Paragraph V(C) as it affects (1) the provision of interstate interexchange (i.e. Hawaii to mainland) services by the Hawaiian Telephone Company ("HTC"),[28] (2) the status and disposition of facilities owned by HTC and used to provide such service, and (3) the status of certain of HTC's international services and facilities. The State argues that the Court should not enter the proposed judgment until these clarifications are made. Moreover, the State argues that before the decree is entered GTE should be required to submit a "Plan of Reorganization" showing in advance the details of how HTC's interstate facilities will be phased-out pursuant to the provisions of Paragraph V(C). Finally, the State argues that "at the very minimum" the Court should compel the parties to rewrite their settlement to incorporate certain regulatory conditions imposed by the Federal Communications Commission in its Order of July 1, 1983, approving the acquisition under the Communications Act.

The Department believes that the measures suggested by Hawaii are not necessary. Paragraph V(C) states a general prohibition against the provision of interexchange services and the ownership of interexchange facilities by a GTOC.[29] As explained in the GTE CIS, at 17–21, 48 FR at 22031, this provision is intended to prohibit the GTOCs' provision of interexchange services, to prohibit the expansion of GTOCs' current ownership of interexchange facilities, and to require a phase-out of ownership of those facilities according to the requirements imposed in Paragraph V(C) (2), (3) and (4).[30] Each GTOC is then under an absolute prohibition against future vertical integration. Paragraph V(C)(1).

The Department fully expects that where regulatory approval is required prior to any disposition of interexchange operations pursuant to GTE's Paragraph V(C) obligations, that regulatory review and approval process will occur before the disposition can be consummated. The State of Hawaii likely would take the same active part in these proceedings as it has taken in many other regulatory proceedings which affected the interests of the State. This should adequately protect against any disruption of service or increase in rates that could threaten the public interest. The State's scenario of immediate and profound service disruption also assumes that AT&T, Sprint and MCI would all abandon the basic Hawaii-mainland service which they each currently offer, which seems a highly unlikely possibility.[31] Moreover, to clarify a point raised by the State, GTE would be free to consolidate HTC's interexchange operations with those of Sprint or GTE Spacenet Corp. (the successor to SPSC) or GSAT. *See* State of Hawaii at 17. This is consistent with the proposed decree's competitive rationale of separating rate-regulated exchange operations from unregulated interexchange operations. It is also consistent with the provision of Paragraph IV(A)(6) that "the GTOCs and the acquired entities shall not jointly provide telecommunications or information services or jointly own the assets used to provide such services."

In its comments, the State expresses particular concern about the fact that, unlike other GTOCs which simply concur in Bell tariffs, HTC participates in the partnership with AT&T through its own separate tariffs. These tariffs generally cover the Hawaii-to-mainland side of the interconnection partnership. *See* State of Hawaii at 7. For example, an MTS/WATS call from Hawaii to a mainland point is billed under the HTC tariff while a mainland-originated call to Hawaii is billed under the Bell tariff. Appropriate settlements are made pursuant to the agreements between the partners. Again, the Department fully expects that pursuant to its obligations under Paragraph V(C), GTE will take all necessary steps to discontinue offering Hawaii to mainland services through HTC. GTE of course would be free to continue to provide Hawaii-mainland services through a non-GTOC subsidiary such as Sprint. In sum, it is highly unlikely that the State's "spector of immediate and profound disruption of basic service" would ever materialize.

Hawaii further suggests that before the Court can assess the reasonableness of the settlement reached by the parties, the Court must first require and review a "plan of reorganization" setting forth all details of the disposition of HTC's interstate operations, and that the Court should await the outcome of any regulatory proceedings initiated pursuant to the plan. In essence, the State is suggesting a substantial delay before the Court could decide whether or not to enter the proposed Final Judgment. Such a delay is not necessary since the papers submitted under the Tunney Act, together with any further hearings deemed appropriate by the Court, adequately inform the Court concerning the issues presented, and

[28] HTC is a wholly-owned subsidiary of GTE and is defined as a GTOC by Paragraph II(K) and Appendix A of the proposed decree. HTC currently provides all exchange services in Hawaii, and also provides intrastate toll, interstate toll (i.e. Hawaii to mainland) service, and extensive international telecommunications services. Under GTE's July 5, 1983 submission to the Court, the State of Hawaii would constitute a distinct exchange area. Hence, HTC's intrastate services would not be affected by the decree. Further, HTC's international operations are specifically placed outside the provisions of the decree. *See* Proposed Final Judgment ¶ V(C)(1). Thus, HTC's interstate services and facilities are the only operations affected by the decree.

[29] Prior to entry of the proposed decree, Paragraph V(C)(1) will be corrected so that the current language "No GTOC shall provide interexchange telecommunications services or own jointly with GTE or any other person facilities used to provide such services . . ." will read "No GTOC shall provide telecommunications services or own, individually or jointly with GTE or any other person, facilities used to provide such services. . . ."

[30] Some exceptions may be necessary, in a few isolated instances, to permit continued GTOC ownership and operation of individual interexchange facilities within existing defense communications networks, e.g. AUTOVON. We have not yet been informed of any further details.

[31] *See* FCC Order Approving the Acquisition ¶ 63–64 (noting and listing the numerous carriers, including resellers, which actually or potentially could serve Hawaii).

permit a finding of public interest. The Court rejected proposals for such delays prior to entry of the decree in the *AT&T* case, which involved a significantly more complex division of substantially more assets.[32] The Court should similarly reject such proposals in this case. While the proposed decree requires the GTOCs' to withdraw from the provision of interexchange services, it permits them to phase out their ownership of interexchange facilities under the flexible scheme described in Paragraphs V(C) (2), (3) and (4). This disposition may take the form of sales or leases to other companies, intracompany transfers of assets, or simply the non-discriminatory offering of uncommitted interexchange routing and transmission capacity pending their gradual depreciation and phase-out.[33]

Hawaii also argues that, at a minimum, the Court should insert verbatim two regulatory conditions imposed by the FCC in its order approving the acquisition. These conditions were the result of much discussion and negotiation among GTE, the State of Hawaii, and the FCC staff during its review of the acquisition.[34] Ultimately, the FCC determined that certain of the suggested revised conditions should be imposed by the FCC in order to foster certain of its regulatory goals.[35] The Department does not believe such regulatory conditions are necessary or appropriate to its antitrust settlement with GTE,[36] since GTE is already under the obligations imposed by them by virtue of the FCC's order.

We now turn to specific clarifications regarding both HTC's interstate operations and its international operations. The State comments that there is uncertainty as to whether HTC is subject to Paragraph V(C)(2) and whether its existing agreements with AT&T Long Lines are subject to Paragraph V(C)(3).[37] The existing agreements between the GTOCs and AT&T are, in all but one instance, solely with the BOCs (in the instance of Hawaii, they are apparently with both a BOC and AT&T Long Lines). It is the unequivocal intention of the decree to include all of HTC's interstate operations within the scope of Paragraph V(C)(2) and to include HTC's existing agreements with AT&T Long Lines within the scope of Paragraph V(C)(3). Hence, this provision would permit HTC to replace its present division of revenues agreements with a comparable agreement. The parties will amend the language of Paragraph V(C)(3) accordingly before the proposed Final Judgment is entered.[38]

Finally, the State requests clarification regarding the exemption contained in Paragraph V(C)(1) of certain international operations of HTC. This exemption covers any telecommunications service (and any facilities used to provide such service) between the State of Hawaii and any point outside the fifty United States (including the District of Columbia). Hence, service between Hawaii and the Northern Mariana Islands is included within this exemption and thus would not be covered by Paragraph V(C)'s prohibitions and obligations. Likewise, service between Hawaii and Puerto Rico or the Virgin Islands is also within the Paragraph V(C)(1) exemption. Under the proposed decree, HTC could continue to provide these services without regard to the obligations contained in Paragraph V(C).

V. Comments Regarding Exchange and Serving Areas

Two comments were received concerning the proposed exchange and serving areas to be created by the GTOCs pursuant to Paragraphs II (H) and (R) of the proposed decree. The comments of the State of Michigan expressed its approval of the configurations proposed by GTE on July 5, 1983, for exchange areas, serving areas, and related associations within that state. The comments of the Public Service Commission of the State of West Virginia expressed its concern for the association of ten GTOC central offices with the Clarksburg Local Access and Transport Area ("LATA") of the Chesapeake & Potomac Telephone Company of West Virginia ("C&P"). According to West Virginia, C&P intends to reconfigure its facilities and include two central offices (Keyser and Piedmont) in its Hagerstown LATA because of an existing community of interest. These two offices are presently homed on Clarksburg, West Virginia. Because of its facilities network, however, the GTOC must associate ten tributary central offices with the Clarksburg LATA, rather than the Hagerstown LATA, despite an apparent community of interest between the communities served by these ten GTOC offices, the C&P Keyser and Piedmont offices, and Hagerstown. West Virginia suggests that either the ten GTOC offices be assoicated with Hagerstown at this time (with AT&T bearing the cost of the GTOCs reconfiguration) or that the Court "allow a change in LATA association for these exchanges when the network is reconfigured". West Virginia at 4.

While the Department has not yet determined whether to approve or disapprove GTE's proposed West Virginia exchanges, serving areas and related associations, the proposed decree allows for the flexibility which the state requests. The proposed decree permits the GTOC, at the time of any subsequent facilities reconfiguration, to apply to the Department and the court for any necessary changes in exchange or serving areas or associations, thus achieving the objective sought by West Virginia.

VI. Conclusion

The proposed decree is in the public interest. While it permits GTE to acquire Sprint, it does so under structural and injunctive limitations. These include equal access definitions, a timetable for the implementation of equal access by the GTE operating companies, a mandated elimination over time of the GTE–AT&T intercity partnership, and strict structural separation between the regulated, monopoly GTOCs and the acquired unregulated interexchange carrier, Sprint. We believe the decree not only will effectively constrain GTE's ability to act anticompetitively, but also will significantly aid in the creation of a more competitive environment in the telecommunications industry.

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[32] *See AT&T (Decree)*, 552 F. Supp. at 211 (rejecting proposals to defer entry until completion of regulatory proceedings), 213 (rejecting proposals to defer entry until submission of plans for reorganization).

[33] *See* GTE CIS at 17–21, 48 FR at 22031.

[34] *See* FCC Order Approving the Acquisition, at ¶¶ 61–64.

[35] In particular, the regulatory goal to be fostered is the FCC's long-standing Communications Act policy of integrating the rates and services offered to Hawaii with those offered on the mainland. *See, e.g., Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, 38 FCC 2d 665, 695 (1972) (stating that the FCC's policy objective is that "service between Hawaii and all mainland points shall be provided at rates and on terms comparable to those obtained within the contiguous states").

[36] The Department does not take any position on the merits of those conditions under the Communications Act.

[37] The confusion arises from Paragraph V(C)(3)'s reference to GTOC assets "in any state" (since some of the partnership facilities are actually located in the Pacific Ocean) and the reference to "replacing existing agreements with the BOCs." *See* State of Hawaii at 15.

[38] Paragraph V(C)(3) will read:

Nothing contained herein shall prohibit a GTOC, in any location in which it has assets subject to Paragraph V(C)(2) for which it has not recovered its capital investment and for which the leases described in Paragraph V(C)(2) are not in effect, from replacing existing agreements with the BOCs or AT&T with an agreement with an interexchange carrier (other than the acquired entities) * * * (changes underscored).

Respectfully submitted,

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[FR Doc. 83-27820 Filed 10-12-83; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

John Fred Maras, D.O.; Denial of Application

On July 25, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to John Fred Maras, D.O., Road 4, Box 59TL, Du Boise, Pennsylvania 15801 and c/o Rockview State Correctional Institute, Box A, Bellefonte, Pennsylvania 16823 (Respondent). The Order to Show Cause sought to deny an application for DEA registration in Schedules IIIN, IV and V executed December 22, 1982 by Respondent.

There were three statutory grounds under 21 U.S.C. 824(a) for the issuance of the Order to Show Cause. (1) On July 4, 1981, the Pennsylvania State Board of Osteopathic Medical Examiners revoked Respondent's medical license, thereby terminating his authority to possess, dispense, prescribe or otherwise handle controlled substances in Pennsylvania. (2) Respondent was convicted February 8, 1980 in the Court of Common Pleas of Blair County, Pennsylvania of 10 counts of illegal distribution of controlled substances in violation of 35 Pennsylvania Statutes 780-113(a)(14), felony convictions relating to controlled substances. (3) Respondent materially falsified the December 22, 1982 application by stating the question asking whether he is authorized to handle controlled substances under the laws of the state in which he operates or intends to operate was not applicable to him.

Respondent specifically waived his opportunity for a hearing on the issues raised by the Order to Show Cause and submitted a letter of explanation. The Acting Administrator finds that Respondent waived his opportunity for a hearing under 21 CFR 1301.54(c), and enters this Final Order on the record as it appears under 21 CFR 1301.54(d) and 1301.54(e).

Dr. Maras is currently incarcerated in a Pennsylvania state prison for 15 to 30 years. In his letter, he states that he does not have a license to practice in any state. DEA has consistently held when a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices or intends to practice DEA is without legal authority to issue or maintain a registration. *Michael C. Barry, M.D.*, 48 F.R. 35777 (1983); *Floyd A. Santner, M.D.*, Dk. No 79-23, 47 F.R. 51831 (1982); *Marshall S. Tuck*, M.D. Dk. No. 80-28, 45 F.R. 85845 (1980). Since Dr. Maras lacks authority to possess, dispense, prescribe, administer or otherwise handle controlled substances in Pennsylvania, the Acting Administrator has no choice but to deny the application executed by Dr. Maras.

Respondent states in his letter that he inadvertently stated the question concerning state licensure did not apply to him. His explanation was that his last valid medical license was in Missouri, not Pennsylvania and that he hoped to have his Missouri license reinstated shortly. Respondent requested registration at an address in Du Boise, Pennsylvania. While the Acting Administrator is unpersuaded by this explanation, he need not reach the issue since DEA cannot register Dr. Maras in Pennsylvania.

It is the decision of the Acting Administrator to deny the application for DEA registration executed December 22, 1982 by Respondent. Accordingly, under the authority vested in the Attorney General by Section 304 of the Controlled Substances Act, 21 U.S.C. 824 and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby denies the application for registration in Schedules IIIN, IV and V executed by John Fred Maras, D.O., effective immediately.

Dated: October 4, 1983.

Francis M. Mullen, Jr.,
Acting Administrator.

[FR Doc. 83-27804 Filed 10-12-83; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 83-11]

Joseph A. O'Brien; Denial of Application

On April 6, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Joseph A. O'Brien, 1079 West 5th, Eugene, Oregon 97402 (Respondent). The Order sought to deny an application Respondent executed on June 20, 1982, for registration as a researcher in Schedule I for reason that the Food and Drug Administration (FDA) denied his application for FDA registration as a Schedule I researcher. Therefore, DEA could not register Respondent under 21 U.S.C. 823(f).

Respondent, proceeding *pro se*, requested a hearing on the issues raised by the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, Respondent submitted a "waiver of oral arguments" in which he explicitly waived his opportunity for a hearing. Judge Young *sua sponte* terminated the proceedings before him. Accordingly, the Acting Administrator finds that Respondent waived his opportunity for a hearing and enters this final order on the investigative file and the record as it appears. 21 CFR 1301.54(d) and 1301.54(e)

Under the Controlled Substances Act, the Department of Health and Human Services, Food and Drug Administration (FDA) is responsible for evaluating applications for research with controlled substances in Schedule I. 21 U.S.C. 823(f). Respondent had applied for DEA registration to conduct research with marijuana, a Schedule I controlled substance, at about the same time he filed a protocol with FDA. FDA disapproved Respondent's protocol on October 25, 1982. The memorandum disapproving the protocol stated that from the information Resondent submitted, FDA was unable to determine his competency or qualifications or scientific method of the plan. Respondent's application with FDA was handwritten and two pages long.

Applicants whose protocols are disapproved by FDA may avail themselves of the DEA administrative forum provided for in 21 CFR 1301.42. The Acting Administrator has examined the file in this matter, including the various submissions by Respondent, and concludes that FDA very properly disapproved this protocol.

Respondent possesses no post-graduate degree. His "reserach" was to be conducted in his home. Security for the cannabis plants would be provided by spraying "massive doses of insecticides" on the plants to prevent diversion. Once the "research" was completed, the plants would be burned in an incinerator on the site. Had a hearing been held, the FDA pharmacologist who reviewed the protocol would have testified that Respondent's protocol lacked the bare minimum of information necessary to assess the scientific merit of the application. Further, the proposed "research" was impossible without

equipment and training which Respondent lacks.

21 U.S.C. 824(f) requires DEA to register practitioners whose protocols for reserach are approved by FDA unless the grounds for denial in 21 U.S.C. 824(a) exist. These grounds include material falsification of an application for registration (21 U.S.C. 824(a)(1)) and conviction of a felony relating to controlled substances (21 U.S.C. 824(a)(2)). Since FDA disapproved the protocol filed by Respondent, DEA will deny the application on that ground. However, the Acting Administrator is constrained to note the background facts of Mr. O'Brien's application.

Respondent was convicted in 1967 in state court in Oregon of possession of marijuana, then a felony under Oregon law. He failed to note that fact on his DEA application. In subsequent filings Respondent makes much of "decriminalization" of possession of marijuana in Oregon. The fact remains that possession was a felony in 1967. Certainly this would be an important fact in evaluating Respondent's DEA application.

Respondent was convicted in Oregon state court on July 20, 1983, of possession of more than one ounce of marijuana, a felony under Oregon law. The facts of that conviction show that Respondent was growing nearly 300 marijuana plants in his home on June 30, 1982. Local police officers serving a search warrant for a fugitive from the Oregon penitentiary at O'Brien's home found the plants growing in boxes inside the house.

It is clear to the Acting Administrator that this application and protocol are merely transparent shams for O'Brien to legitimize his illegal possession of marijuana. There is no hint of scientific merit in this application. The Controlled Substances Act permits "practitioners" who are authorized by FDA to be registered to conduct Schedule I research. Respondent falls far short of the definition of practitioner contained in 21 U.S.C. 802(20): " * * * a scientific investigator * * * licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he practices or does research * * * to conduct research with respect to a controlled substance in the course of professional practice or research." DEA has denied registration to unqualified individuals like Mr. O'Brien, who seek registration as a legitimate way to obtain controlled substances. See *B. Earl Mahan*, 48 FR 20820 (1983) and *Michael J. McClara*, 46 FR 57375 (1981).

It is the decision of the Acting Administrator to deny the application filed by Joseph A. O'Brien on June 20, 1982, for reason that the FDA disapproved the protocol filed by O'Brien. Under the authority vested in the Attorney General by 21 U.S.C. 823 and 824 and delegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100(b), the Acting Administrator denies the application filed by Joseph A. O'Brien, effective immediately.

Dated: October 4, 1983.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 83-27803 Filed 10-12-83; 8:45 am]

BILLING CODE 4410-09-M

Herbert W. Voorhies, M.D.; Denial of Application

On July 22, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Herbert W. Voorhies, M.S., 1091 Pine Oak Lane, Pasadena, California 91105 (Respondent), seeking to deny an application for DEA registration executed May 4, 1983 by Respondent. The statutory predicate under 21 U.S.C. 824(a)(2) was Respondent's conviction on December 21, 1979 in the United States District Court for the Middle District of Tennessee following a jury trial of 49 counts of distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), felony convictions relating to controlled substances.

Respondent explicitly waived his opportunity for a hearing on the issues raised by the Order to Show Cause. The Acting Administrator finds that Respondent waived his opportunity for a hearing under 21 CFR 1301.54(c), and enters this Final Order on the record as it appears under 21 CFR 1301.54(d) and 1301.54(e).

DEA has previously considered the fitness of Dr. Voorhies to handle controlled substances. The former Acting Administrator entered a Final Order in *Herbert Webster Voorhies, M.D.*, Dk. No. 80-37, 46 FR 34859 (July 6, 1981) in which he revoked a Certificate of Registration previously issued to Respondent and denied an application for registration at a new address. The 1981 Final Order was based on a recommendation of Administration Law Judge Francis L. Young, following a hearing.

The Acting Administrator incorporates the findings contained in the 1981 Final Order. Respondent maintained a weight control practice in Nashville, Tennessee from which he illegally dispensed thousands of dosage units of amphetamine or amphetamine-like controlled substances. An audit by DEA investigators revealed very large shortages of such substances as dextroamphetamine sulphate, Dexamyl, and Dexedrine. Respondent regularly dispensed these drugs to "patients" who asked for certain drugs by name or nickname at the first visit and returned regularly to obtain the substance. Respondent dispensed amphetamines to individuals who never lost weight, or even gained weight, while receiving the drug. Expert witnesses testified at the criminal trial that these dispensing practices, including dispensing amphetamines to persons with histories of stomach ulcers, diabetes or blackouts, were not in the usual course of professional practice. Neither was Dr. Voorhies's practice of dispensing amphetamine to patients who wanted to stay awake or get ahead of a younger man on the job.

Respondent now requests registration in Schedule IV and V. He states he did not know of the existence of 21 U.S.C. 841 but thought he was conducting his practice legally.

Dr. Voorhies is no more fit today to handle any controlled substances than he was in 1981. He has submitted nothing to indicate otherwise. The sheer size of these violations preclude the Acting Administrator from registering Respondent. As Judge Young observed in 1981, there is no reason to disagree with the jury's finding of guilty nor for mitigating its effect. Respondent has submitted no new evidence to warrant any mitigation. He has not shown that he is now capable of responsibly and professionally handling controlled substances.

It is the decision of the Acting Administrator to deny the application of DEA registration executed May 4, 1983 by Respondent. Accordingly, under the authority vested in the Attorney General by Section 304 of the Controlled Substances Act, 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Acting Administrator hereby denies the application for registration executed by Herbert W. Voorhies, M.D., effective immediately.

Dated: October 4, 1983.

Francis M. Mullen, Jr.,

Acting Administrator.

[FR Doc. 83-27805 Filed 10-12-83; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-85]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Rotorcraft Technology.

DATE AND TIME: November 2, 1983, 8:30 a.m. to 5 p.m.; November 3, 1983, 8:00 a.m. to 4:30 p.m.; and November 4, 1983, 8:00 a.m. to 12 noon.

ADDRESS: Lewis Research Center, Cleveland, OH; Administration Building, Room 215.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Ward, National Aeronautics and Space Administration, Code RJL-2, Washington, DC 20546 (202/755-2375).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Rotorcraft Technology was established to assist NASA in assessing the current adequacy of rotorcraft technology and recommend actions to reduce deficiencies through modification of the planned NASA research and technology program in rotorcraft aerodynamics, acoustics, structures, dynamics, propulsion systems components, flight control, and avionics. The Subcommittee, chaired by Mr. Edward S. Carter, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 60 persons including the Subcommittee members and participants).

Type of meeting: Open.
Agenda:
November 2, 1983
8:30 a.m.—Summary of NASA Fiscal Year 1983 Rotorcraft Research and Technology Programs and Program Planning for FY 1984—Ames and Langley Research Centers.
5 p.m.—Adjourn.
November 3, 1983
8 a.m.—Summary of NASA Fiscal Year 1983 Rotorcraft Research and Technology Programs and Program Planning for Fiscal Year 1984—Lewis Research Center.
11 a.m.—Federal Aviation Administration Engineering and Development Plan for Aircraft Icing.
1 p.m.—Briefings by Members.
4:30 p.m.—Adjourn.
November 4, 1983
8 a.m.—Working Session and Draft Summary Presentation.
12 noon—Adjourn.

Dated: October 4, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-27764 Filed 10-12-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-86]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Advisory Subcommittee on Transport Aircraft.

DATE AND TIME: November 8, 1983, 8:30 a.m. to 4:30 p.m.; November 9, 1983, 8 a.m. to 3:30 p.m.

ADDRESS: NASA Headquarters, Federal Building 10B, Room 625, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Winblade, National Aeronautics and Space Administration, Code RJT-2, Washington, DC 20546 (202/755-3000).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Transport Aircraft has been established to assist the NASA in assessing the current adequacy of transport aircraft technology and recommend actions to reduce deficiencies through modification of the planned NASA research and technology program in transport advanced aerodynamics, avionics and controls, structures and materials, and propulsion. The Subcommittee, chaired by Russell Hopps, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and participants).

TYPE OF MEETING: Open
AGENDA:
November 8, 1983
8:30 a.m.—Chairperson's Opening Remarks.
8:45 a.m.—Executive Secretary's Report.
9 a.m.—NASA Budget Status and Aeronautics Long Range Plan.
10 a.m.—Systems Research & Technology Program Status Reports.
2:30 p.m.—Discussion of Systems Programs.
3:30 p.m.—The Future of Air Transport and NASA's Aeronautics Role.
4:30 p.m.—Adjourn.
November 9, 1983
8 a.m.—Emerging Technologies in Air Transportation.
9 a.m.—Discussion of Major Issues and NASA's Role in the Future of Air Transport Technology.
1 p.m.—Subcommittee Recommendations.
3:30 p.m.—Adjourn.

Dated: October 5, 1983.

Richard L. Daniels,

Director, Management Support Office, Office of Management.

[FR Doc. 83-27785 Filed 10-12-83; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-317]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-53, issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1 located in Calvert County, Maryland.

The amendment would: (1) Provide changes to the Appendix A Technical Specifications (TS) to allow Cycle 7 operation, (2) revise the TS Limiting Conditions for Operation and Surveillance Requirements for the Auxiliary Feedwater System, (3) delete the Limiting Condition for Operation and Surveillance Requirements for certain post-accident Monitoring instruments, (4) change the TS for the indicating ranges of the remote shutdown monitoring instrumentation (5) change the surveillance requirements for Subchannels A-3 and B-3 of the automatic actuation logic for the Containment Spray Actuation System, and (6) provide Limiting Conditions for Operation and Surveillance Requirements for the Containment Vent Isolation Valves (MOV-6900 and MOV-6901).

The above proposed changes to the TS are in accordance with the licensee's application dated August 22, 1983, as supplemented September 1, 1983, September 16, 1983, and two supplements dated September 20, 1983.

Before issuance of the proposed license amendment, the Commission

will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for conclusions regarding "no significant hazards considerations" by providing examples (48 FR 14870). In this regard, the TS changes resulting from the reload analysis for Cycle 7 operation conform to example (iii) in 48 FR 14870 which states that no significant hazards considerations are expected to exist if operation of the facility in accordance with the proposed amendment involves:

> For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

Accordingly, on this basis, the NRC staff proposes to determine that the TS changes associated with Calvert Cliffs Unit 1 Cycle 7 operation involve no significant hazards considerations. The remaining proposed changes to the TS do not conform to any of the examples provided in 48 FR 14870; the basis for the proposed no significant hazards consideration determination is presented herein.

Changes in the TS, associated with the Auxiliary Feedwater System, are required to reflect modifications to this system. These system modifications include the addition of an independent auxiliary feedwater train with a motor powered pump. A cross-connect is also provided between the Unit 1 and Unit 2 Auxiliary Feedwater Systems. In addition, the pre-set injection valves will be replaced with flow modulating valves.

In order to assure operability of the modified system, a period of poststartup testing will be required. During this period, the automatic start and flow modulating features of the auxiliary feedwater system may be inoperable. Accordingly, the licensee has requested a special test exception to be inserted in the TS to address startup testing of the auxiliary feedwater system.

With the automatic start and flow modulating features inoperable, the auxiliary feedwater system would consist of two, manually-started, steam driven, auxiliary feedwater pumps capable of supplying water to each of two steam generators. This configuration is identical to the auxiliary feedwater system in the as-licensed plant configuration which required operator action to initiate and adjust auxiliary feedwater flow. The licensee has performed safety analyses to evaluate the time required for operator response in situations requiring auxiliary feedwater flow.

The safety analyses performed to evaluate the effects of auxiliary feedwater flow deviations show that no flow for 10 minutes after the most severe undercooling transient, or runout flow for 10 minutes after the most severe overcooling transiet, is acceptable. Consequently, adequate time would be available to manually initiate and control auxiliary feedwater flow in the event that either of these transients were to occur during the proposed 30 day period. A period of 10 minutes is considered adequate for operator response. In order to assure that operators are aware of the status of the auxiliary feedwater system and the possibility that operator control may be required, the licensee will brief the operators on at least a weekly basis concerning the condition of the auxiliary feedwater system. Since operator response can adequately substitute for the automatic start and flow modulating features of the modified auxiliary feedwater system, accidents which result in auxiliary feedwater flow will not be more severe during the 30 days following Cycle 7 startup, during which the test exception will be applicable. The licensee has proposed additional changes to the Limiting Conditions for Operation (LCOs) for the Auxiliary Feedwater System. These proposed changes to the LCOs are equivalent to existing LCOs in that, should an auxiliary feedwater pump be inoperable (among a total complement of two steam driven pumps, and one motor driven pump) the proposed LCO would require that two auxiliary feedwater pumps would be operable within 72 hours. The existing LCO is based upon two steam driven auxiliary feedwater pumps and, in the event that one pump is inoperable, both pumps must be operable within 72 hours. A second proposed LCO would allow two of the three auxiliary feedwater pumps to be inoperable for up to 72 hours provided that the auxiliary feedwater cross/connect, and the Unit 2 motor driven auxiliary feedwater pump, are verified to be operable. This proposed LCO is at least equivalent to the existing LCO in that a total of two auxiliary feedwater pumps are required to be operable; in this case one Unit 1 and one Unit 2 auxiliary feedwater pump would be required.

A change to LCO is also proposed to address the changing of operational modes (e.g. from startup to power operation) with an inoperable auxiliary feedwater pump. Since no additional safety concerns are associated with changing operational modes with an inoperable auxiliary feedwater pump, no prohibition on such mode changes is appropriate.

The Surveillance Requirements have been proposed for modification to reflect changes to the auxiliary feedwater system. Prior to modification auxiliary feedwater flow was controlled via preset flow control valves. These valves were the subject of surveillance to assure that their position would permit a preset flow value. The TS required reverification of auxiliary feedwater flow control valve alignment should the auxiliary feedwater flow control valves be repositioned. Since these preset flow control valves have been replaced by air-operated modulating valves, this surveillance is no longer applicable. In place of this requirement, BG&E has proposed to perform a flow verification test each 18 months which would assure that each auxiliary feedwater pump delivers flow upon automatic initiation. In addition, BG&E has proposed a test of the dynamic head for the motor driven auxiliary feedwater pump. This proposed test would be conducted every 31 days to assure a dynamic head of at least 3100 ft on recirculation flow. This test frequency is consistent with dynamic head test currently required for the steam driven auxiliary feedwater pumps.

The above proposed changes to the Limiting Conditions for Operation and Surveillance Requirements for the Auxiliary Feedwater System do not allow a decrease in the operability or effectiveness of surveillance of the auxiliary feedwater system. Based upon the above, the proposed changes to the TS for the Auxiliary Feedwater System maintain or improve the readiness of this system to respond to emergency conditions and, therefore, the staff

proposes to determine that the proposed changes do not involve significant hazards considerations.

BG&E has requested that certain post-accident monitoring instrumentation be deleted from the TS. Although these instruments would not be physically removed from their installed locations, they would no longer be the subject of TS requirements. These instruments include:

(1) Power Range Nuclear Flux Monitor—This instrument was judged to be unnecessary for post-trip reactor monitoring. The function of post-accident flux monitoring is adequately performed by the Wide Range Logarithmic Neutron Flux Monitor, which includes the power range flux indication and is addressed in the TS.

(2) Reactor Coolant Total Flow—Reactor coolant system total flow is considered a non-essential channel of instrumentation in the post-trip condition because of the availability of reactor coolant system (RCS) temperature indication, RCS subcooled margin and Reactor Coolant pumps status. In the absence of adequate core flow, RCS temperature and subcooled margin are indirect indicators of core flow conditions and provide adequate display to ensure appropriate actions are initiated by operations personnel to recover from any abnormal conditions existing in the post-trip condition.

Neither the Total Reactor Coolant Flow nor the Power Range Nuclear Flux Monitor is referenced in the emergency operating procedures. We therefore conclude that the proposed deletion of operability and surveillance requirements for the power range nuclear flux monitor and reactor coolant total flow, post accident, instumentation would not decrease the ability of the licensee to detect and correct abnormal post-accident conditions. Accordingly, the staff proposes to determine that the proposed deletion of the TS requirements for the subject post-accident monitoring instrumentation does not involve a significant hazards consideration.

The remote shutdown instrumentation allows the reactor operator to monitor key safety parameters from outside the control room. No automatic safety features are actuated from the remote shutdown instrumentation. Changes to Reactor Coolant Cold Leg Temperature, Steam Generator Pressure and Level and Wide Range Neutron Flux instrumentation as described in the applicable LCO, have been proposed.

With regard to Reactor Coolant Cold Leg Temperature (RCS)T_c, NUREG-0737, Item II.F.2 requires the installation of instrumentation for detection of inadequate core cooling. Accordingly, subcooled margin monitors have been installed utilizing, among other inputs, existing temperature measurement channel inputs. The initial installation of the subcooled margin monitors utilized (RCS)T_c narrow range temperature inputs. The detection range of the subcooled margin monitors was limited by the measurement range provided by the cold leg temperature measurement channels required by the LCO to be from 0-600°F. The design of the subcooled margin monitors precludes providing any representative engineering data at temperature measurement ranges less than 212°F (boiling point of water) or greater than 705°F (critical point of water). The guidance contained in Reg. Guide 1.97 suggested modifications to provide temperature measurement ranges of 150°F to 750°F. Since temperature measurement ranges below the boiling point or above the critical point of water provided no useful input to the subcooled margin monitors and produce the undesirable effect of greater inaccuracy over the extended measurement ranges, a limited T_c measurement range between the two points that would provide useful input to the subcooled margin monitors, 212°F to 705°F, was selected.

Steam generator level measurement has been modified to provide an extended range of level indication. It had previously indicated level from −116 to +63.5 inches. The modification increases the range to −401 to +63.5 inches as required by the proposed LCO. The steam generator level measurement channel provides indication at the remote shutdown panel (2C43) and does not provide any control functions at the panel. The additional level range provides the operator with more representative information of actual steam generator inventory. Finally, the range of the "Wide Range Neutron Flux" instrumentation has been increased, as indicated in the proposed LCO, from .1 counts per second (cps)—150% power to .1 cps—200% power.

As indicated previously the remote shutdown instrumentation is provided for monitoring purposes and does not provide inputs for automatically actuated equipment; therefore, the changes as reflected in the proposed LCO do not change the course or severity of any analyzed accidents. Moreover, since the proposed changes to the instrumentation ranges provide equivalent or improved information, the usefulness of this instrumentation to provide post-accident information has not been degraded. On this basis, the staff proposes to determine that these proposed changes to the LCO for remote shutdown instrumentation do not involve significant hazards considerations.

The licensee has proposed a change in the Surveillance Requirements for subchannels A-3 and B-3 of the Containment Spray Actuation System (CSAS). The purpose of CSAS subchannels A-3 and B-3 is to isolate the service water supply to the spent fuel pool coolers on indication of high containment pressure; the licensee has proposed a plant modification which would move these functions to other CSAS actuation channels. CSAS subchannels A-3 and B-3 as reconstituted would perform the following functions on indication of high containment pressure: Trip the main feedwater, condensate booster, and heater drain pumps and close the main steam and feedwater isolation valves. These automatic actions would isolate the main feedwater system in the event of a steamline break thus preventing overpressurization of the containment. The same automatic features would also be added to the Steam Generator Isolation function.

The present surveillance requirement for subchannels A-3 and B-3, requiring monthly testing, is no longer appropriate for the reconstituted subchannels A-3 and B-3. Such testing, during reactor operation, would result in a reactor trip due to closure of the main steam isolation valves since the MSIVs cannot be bypassed during testing. The licensee has proposed that CSAS subchannels A-3 and B-3 be tested every 18 months during plant shutdown, which is appropriate considering the design of the associated equipment and the need to prevent unnecessary reactor scrams. Since the addition of automatic tripping of the pumps in the feedwater trains results in a less severe plant response to a main steamline break, the NRC staff proposes to conclude that the associated changes to the TS involve no significant hazards considerations.

The licensee has proposed changes to the TS to address LCOs and Surveillance Requirements for Containment Vent Isolation Valves. These valves are presently designated as Hydrogen Purge Outlet Valves (MOV-6900 and MOV-6901). These valves are presently non-automatic, motor operated, valves that are required by the TS to be maintained in the closed position during reactor operation (Modes 1, 2, 3 and 4). A modification to these valves would add an automatic isolation signal to close these valves on a Safety Injection Actuation Signal (SIAS). The licensee has proposed that the redesignated Containment Vent

Isolation Valves be required to close automatically in less than 20 seconds as verified by periodic testing. Under reactor operating conditions Modes 1, 2, 3 and 4 the proposed LCO would require the valves to be maintained in the closed position and doubly isolated. In this case, double isolation includes removal of motive power (supply breaker open) and the use of a key-locked switch. Monthly surveillance would assure that the valves remain closed and doubly isolated. In addition, during core alterations or movement of irradiated fuel within containment, the licensee has proposed TS to require that these valves remain closed.

The proposed TS are consistent with other existing Calvert Cliffs Unit 1 TS for containment purge valves. In addition, both existing and proposed TS for valves MOV-6900 and MOV-6901 require these valves to be closed during reactor operation and during refueling operations; thus, the proposed TS would be at least as restrictive as existing TS. Accordingly, the NRC staff proposes to determine that the TS changes associated with the modified MOV-6900 and MOV-6901, the Containment Vent Isolation Valves, involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

By November 14, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a writen petition for leave to intervene. Request for a hearing and petitions for leave to intervene shalll be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to and James A. Biddison, Jr., General Counsel, G and E Building, Charles Center, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a

substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 22, 1983 as supplemented September 1, 16 and two dated September 20, 1983 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 6th day of October, 1983.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 83-27987 Filed 10-12-83 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-62, and DPR-71 issued to Carolina Power & Light Company (the licensee), for the operation of the Brunswick Steam Electric Plant, (BSEP) Units 1 and 2 located in Brunswick County, North Carolina.

The amendment would revise the operating license and the provisions in the technical Specifications relating to changes to permit reactor operation at power levels up to 50% of rated thermal power with one recirculation loop out of service. Presently, Brunswick operating licenses require a unit to be in hot shutdown within 24 hours if an idle recirculation loop cannot be returned to service within 12 hours. The change proposed by the licensee would delete this license condition and modify the Technical Specifications (TSs) as necessary to provide for appropriate Average Power Range Monitor (APRM) flux scram trip and rod block settings, an increase in the safety limit Minimum Critical Power Ratio (MCPR) value and revisions to the allowable Average Planar Linera Heat Generation Rate (APLHGR) values suitable for use with an idle recirculation loop, in accordance with the licensee's application for amendment dated June 3, 1982.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 14, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intevene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition would specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial,or other interest in the proceeding; and (3) the posssible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petiton for leave to intervene or who had been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference schedules in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 377 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of the **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and § 2.714(d)

For further details with respect to this action, see application for amendment dated June 3, 1982, which is available for public inspection at the Commission's

Public Document Room, 1717 H Street, NW., Washington, D.C. and at Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland this 5th day of October, 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-27958 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 and 50-330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision concerning a petition dated June 13, 1983, filed by Billie Pirner Garde of the Government Accountability Project on behalf of the Lone Tree Council and others. The petitioners had requested that the Commission take a number of actions with respect to the Midland Plant. The Director, Office of Inspection and Enforcement, has decided to grant in part and deny in part the petitioners' request.

The reasons for this decision are explained in a "Director's Decision" under 10 CFR 2.206 (DD-83-16), which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and in the Local Public Document Room for the Midland Plant, located at the Grace Dow Memorial Library, 1910 W. St. Andrews Road, Midland, Michigan, 48640.

Dated at Bethesda, Maryland this 6th day of October, 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-27969 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424 and 50-425]

Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, Georgia, (Vogtle Electric Generating Plant, Units 1 and 2; Receipt of Application for Facility Operating Licenses

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has docketed a portion of an application for facility operating licenses from Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the applicants) which would authorize the applicants to possess, use, and operate two pressurized water nuclear reactors (the facilities) located on the applicants' site in Burke County, Georgia. Each unit would operate at a reactor core power level of 3411 megawatts thermal. Construction of the facilities was authorized by Construction Permit Nos. CPPR-108 and CPPR-109, issued by the Atomic Energy Commission[1] on June 28, 1974. Construction of Unit 1 (CPPR-108) is anticipated to be completed by September 1986 and Unit 2 (CPPR-109) by March 1988.

The portion of the application docketed by the Commission on September 16, 1983, consisted of the Final Safety Analysis Report, which is currently undergoing review. Upon acceptance of the Environmental Report for review, the Commission will notice an opportunity for hearing on radiological safety and environmental issues to be considered during the review. After the Environmental Report has been accepted and analyzed by the Commission's Director of Nuclear Reactor Regulation or his designee, a draft environmental statement will be prepared by the Commission's staff. Upon preparation of the draft environmental statement, the Commission will cause to be published in the **Federal Register** a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The draft environmental statement will focus only on matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of construction permits. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will prepare a final environmental statement, the availability of which will be noticed in the **Federal Register.**

For further details pertinent to the matters under consideration, see the application for the facility operating licenses dated September, 13, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Burke County Library, 4th Street, Waynesboro, Georgia 30830. Additionally, all correspondence documenting the staff's review of the application is available at these locations. As they become available, the following documents may be inspected at the above locations: (1) The safety evaluation report prepared by the Office of Nuclear Reactor Regulation; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards (ACRS) on the application for facility operating licenses; (5) the proposed facility operating licenses; and (6) the technical specifications, which will be attached to the proposed facility operating licenses.

Dated at Bethesda, Maryland, this 6th day of October 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-27971 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289-SP (Management Phase)]

Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1); Order

October 7, 1983.

Oral argument on the various appeals from the Licensing Board's partial initial decisions concerning management competence and integrity[1] will be held at *9:30 a.m. on Thursday, December 1, 1983, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.* The allotment of time and order of presentation of argument will be announced in a subsequent order.

Each party is to provide the Secretary to this Board *by letter mailed no later than November 17, 1983,* with the name of the individual who will present oral argument on its behalf.

It is so ordered.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 83-27972 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

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[1] Pursuant to the Energy Reorganization Act of 1974, as amended, the Atomic Energy Commission (AEC) was abolished. The Nuclear Regulatory Commission assumed the licensing and related regulatory functions of the AEC.

[1] LBP-81-32, 14 NRC 381 (1981), and LBP-82-56, 16 NRC 281 (1982).

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Station); Exemption From Schedular Requirements

I

The Nebraska Public Power District (NPPD/the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes NPPD to operate the Cooper Nuclear Station (CNS) at power levels not in excess of 2381 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Nemaha County, Nebraska. The license provides, among other things, that it is subject to all Rules, Regulations, and Orders of the Commission now or hereafter in effect.

II

On February 22, 1983, the environmental qualification rule for electrical equipment important to safety for nuclear power plants, 10 CFR 50.49, became effective. Subsection (g) of §50.49 requires that each holder of an operating license issued prior to February 22, 1983, shall by May 20, 1983, identify the electrical equipment important to safety within the scope of the rule already qualified and submit a schedule for either the qualification or the replacement of remaining electrical equipment subject to the rule. This schedule must establish a goal of final environmental qualification of the electrical equipment by the end of the second refueling outage after March 31, 1982, or by March 31, 1985, whichever is earlier. The rule also provides that the Director of the Office of Nuclear Reactor Regulation may grant request for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if these requests are filed on a timely basis and demonstrate good cause for such an extension, such as procurement lead time, task complications, and installation problem.

III

On June 24, 1983, the licensee requested an extension from the dates specified in 10 CFR 50.49(g). The Cooper plant is on a one-year refueling cycle, and went into an outage shortly after the March 1982 date. Therefore, the end of the second refueling outage will occur in early September 1983. The licensee stated that additional time was needed because the rule expanded the scope of electrical equipment required to be qualified to a harsh environment, and the need to identify and qualify this additional equipment will require more time and another outage. The licensee specifically requested extension until the end of its 1985 outage but no later than November 30, 1985.

We have reviewed the licensee submittal and agree that good cause for a schedular extension of the rule exists for the following reasons: the close proximity of the plant's first refueling outage to the effective date of the rule; the plant is on a one-year refueling cycle; and the expanded scope of the rule to include non-safety-refety-related equipment (10 CFR 50.49(b)(2)) and post-accident monitoring equipment (10 CFR 50.49(b)(3)). However, since the licensee has not been able to complete identification of the specific equipment for which a schedular exemption is needed, we are unable to grant the full extent of the licensee's request. Because we find, however, that the licensee is working in good faith to meet the rule, an extension to the end of the third refueling outage after March 31, 1982, can be granted. This would place the licensee on approximately equal footing with plants operating on an 18-month refueling cycle. The licensee must complete qualification of all equipment by the end of the third outage but in any event no later than March 31, 1985. Requests for extension beyond that date must meet the specific criteria stated in 10 CFR 50.49(g).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption:

Exemption is granted from the schedular requirement of §50.49(g) to extend the required date of final environmental qualification of electrical equipment from "the end of the second refueling outage after March 31, 1982, or by March 31, 1985, whichever is earlier" to "the end of the third refueling outage after March 31, 1982 or by March 31,1985, whichever is earlier."

The Commission has determined that the granting of this exemption 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 this action.

Dated at Bethesda, Maryland this 3rd day of October, 1983.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Edson G. Case,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-27673 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-22, issued to Northern States Power Company (the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The amendment would revise the provisions of the Technical Specifications to incorporate revised safety and operating limits associated with the operation of Monticello Nuclear Generating Plant with one recirculation loop out of service. The changes proposed by the licensee would provide for reduced Average Power Range Monitor (APRM) flux scram trip and rod block settings, an increase in the safety limit Minimum Critical Power Ratio (MCPR) value and revisions to the allowable Maximum Average Planar Linear Heat Generation Rate [(MAPLHGR) values suitable for use with an idle recirculation loop. Presently, the Monticello Technical Specifications wdould require plant shutdown if an idle recirculation loop cannot be returned to service within 24 hours. The amendment would authorize the plant to operate up to 50% of rated power for extended periods of time. Supporting the amendment request, is a report prepared by General Electric that presents the analysis for core performance, in accordance with the licensee's application for amendment dated July 2, 1982 as supplemented on October 5, 1982.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 14, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition

for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition would specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 377 and the following message addressed to Domenic B. Vassallo: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 2, 1982, as supplemented October 5, 1982, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland this 5th day of October, 1983.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 83-27874 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352-OL; 50-353-OL]

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2); Notice and Order of Prehearing Conference

October 6, 1983.

As previously confirmed by Order of September 21, 1983, a prehearing conference will begin on the afternoon of October 17, 1983. The conference is expected to continue on October 18, and, if necessary, on October 19, 1983. The precise times and locations are:

October 17, 1983, 1:30 p.m.–4:30 p.m. and October 18, 1983, 9:00 a.m.–4:00 p.m., at:

Municipal Building, 140 Church Street, Phoenixville, Pennsylvania 19460

October 19, 1983, 9:00 a.m.–5:00 p.m., at:

Royersford Borough Hall, 300 Main Street, Royersford, Pennsylvania 19468

Members of the public are welcome to attend but there will be no opportunity for public participation during the daytime prehearing conference sessions which are the subject of this notice. Limited appearance sessions for statements by the public have been scheduled, by notice dated September 23, 1983, for the evenings of October 17 and 18, 1983, from 7:00 p.m. to 10:00 p.m., at the Phoenixville Municipal Building.

The subjects of the prehearing conference, in the approximate order in which they will be discussed, will be:

1. The status and extent of participation by: Consumers Education and Protective Association (CEPA), Keystone Alliance, Mr. Joseph H. White, III, and the interested government agencies (The Commonwealth of Pennsylvania, the Pennsylvania Consumer Advocate and the City of Philadelphia).

2. The hearing schedule for Contentions I-62, V-3a and V-3b, and V-4.

3. The status and schedule for review of offsite emergency plans by the Pennsylvania Emergency Management Agency (PEMA) and the Federal Emergency Management Agency (FEMA).

4. Preliminary discussion of reconsideration of rejection of AWPP Contention VI-1 (Pattern of Improper QA/QC), and schedule for further written submissions.

5. The status of admitted LEA Contentions I-8, I-15 and I-33M.

6. Admissibility of contentions on the environmental analysis of severe accidents proposed by Limerick Ecology

Action (LEA) and the City of Philadelphia.

7. Admissibility of LEA proposed Contentions I–41 (systems interactions) and I–42 (environmental qualification).

8. Admissibility of LEA proposed emergency planning contentions within the scope of 10 CFR 50.47(d) (*i.e.*, primarily "onsite" emergency planning).

All parties and governmental participants are directed to attend the first day of the prehearing conference, with the exception of counsel for the Graterford Prisoners. (Del-Aware is no longer a party before this Licensing Board.) However, matters regarding the scheduling of offsite emergency planning matters, which could affect the interest of the prisoners, will be discussed whether or not counsel for the prisoners is in attendance.

Bethesda, Maryland, October 6, 1983.

It is so ordered.

For the Atomic Safety and Licensing Board.

Lawrence Brenner,

Chairman, Administrative Judge.

[FR Doc. 83-27875 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–329, 50–330; EA–83–109]

Applications, etc.; Consumers Power Co. (Midland Plant Units 1 and 2); Confirmatory Order for Modification of Construction Permits (Effective Immediately)

I

Consumers Power Company (the "licensee") is the holder of construction permits CPPR–81 and CPPR–82 issued by the Atomic Energy Commission (now the Nuclear Regulatory Commission, hereafter "Commission"), which authorize the construction of the Midland Plant, Units 1 and 2 (the "facility"). The facility is under construction in Midland, Michigan.

II

Since the start of construction, the facility has experienced significant quality assurance ("QA") problems. Although the licensee took corrective actions in each case, problems continued to be experienced in the implementation of its QA program.

An NRC Region III inspection, commenced in October 1982 and completed in January 1983, identified significant problems with the QA inspection process and with the conformance to design documents of installed components in the Diesel Generator Building ("DGB"). These findings were identified to the licensee in an exit meeting following the inspection in November 1982. The licensee subsequently made similar findings in other areas of the facility. In view of: (1) The widespread nature of the problems identified, (2) the history of QA problems at the facility, and (3) the ineffectiveness of past corrective actions to resolve these problems, the NRC staff requested the licensee to develop a comprehensive program to verify the adequacy of previous construction and to assure the adequacy of future construction. On December 2, 1982, the licensee directed that the majority of safety related work at the site be halted and presented to the staff the outlines of a Construction Completion Program ("CCP"). By letter dated December 30, 1982, the NRC confirmed the licensee's stopping work and other commitments undertaken by the licensee. In accordance with those commitments, the CCP was formally submitted to the staff on January 10, 1983.

The CCP is a program to provide guidance in the planning and management of the construction and QA activities necessary for completion of the facility in accordance with Commission regulations. The CCP has undergone revisions in response to questions and comments raised by the staff and by members of the public and was submitted in final form on August 26, 1983.

Part of the CCP is a Construction Implementation Overview ("CIO") to be conducted by an independent third party. The CIO effort is described in the CCP and documents provided to NRC on April 8 and 11, May 19, August 30 and September 9, 1983.

The CIO was necessitated by the NRC staff's loss of confidence in the licensee alone to implement an effective QA program. In response to this concern, the licensee has committed to keep the CIO in effect until the licensee has demonstrated to the NRC staff that a third party overview is no longer necessary to provide reasonable assurance that the facility can be constructed in compliance with the Commission's QA criteria (10 CFR Part 50, Appendix B). The licensee has proposed and the staff has approved, by letter dated September 29, 1983, Stone and Webster Engineering Corporation to perform the CIO.

III

The NRC staff has conducted a review of the CCP and has concluded that it constitutes a program which provides reasonable assurance that the facility can be satisfactorily completed in accordance with Commission requirements. I have concluded that the activities halted by the licensee on December 2, 1982, may resume provided they are conducted in accordance with the CCP. I, therefore, find that the public health, safety and interest requires that any continuation of construction be in accordance with the CCP and that the CCP be confirmed by order made immediately effective.

IV

Accordingly, pursuant to Sections 103 and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, Construction Permits CPPR–81 and CPPR–82 are hereby modified to include the following provisions:

a. The licensee shall adhere to the Construction Completion Program, dated August 26, 1983, for the duration of construction of the facility.

b. The licensee shall maintain in effect the Construction Implementation Overview provision of the Construction Completion Program with the Stone and Webster Engineering Corporation as the third party overviewer until the Regional Administrator, NRC Region III, finds in writing that the third party overview is no longer necessary to provide reasonable assurance that the facility can be constructed in compliance with 10 CFR Part 50.

c. The licensee may make changes to the Construction Completion Program provided such changes (1) do not decrease its effectiveness, (2) are submitted to the Regional Administrator with appropriate justification, and (3) are approved in writing by the Regional Administrator prior to their implementation.

V

The licensee may request a hearing on this Order within 25 days of the date of this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. A request for hearing shall not stay the immediate effectiveness of section IV of this order.

If a hearing is to be held concerning this Order, the Commission will issue an order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 6th day of October, 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYound,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-27870 Filed 10-12-83; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-20265]

List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

Foreign private issuers with total assets in excess of $3,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)] (the "Act").[1]

Rule 12g3-2(b) (7 CFR 240.12g3-2(b)) provides as exemption from registration under Section 12(g) of the Act for a foreign issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer: (1) Has made public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed to its security holders.

When it adopted Rule 12g3-2 and other rules relating to foreign securities (see Securities Exchange Act Release No. 8066, April 28, 1967), the Commission indicated that from time to time it would issue lists containing those foreign issuers which have obtained exemptions from the registration provisions of Section 12(g) of the act by providing the information specified in Rule 12g3-2(b). The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the attached list is available in the public files of the Commission. The attached list includes those foreign issuers which, as of October 5, 1983, appear to be current in furnishing information under Rule 12g3-2(b).

The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning certain foreign issuers may not be available in the United States. The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers. The Commission will continue to review activity in the markets for foreign securities to determine whether the present rules are achieving their purpose and whether further rules or rule revisions are necessary in the public interest or for the protection of investors.

Any questions regarding Rule 12g3-2 or the list included herein should be directed to Carl T. Bodolus, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 ((202) 272-2346). Requests for copies of the documents in the files should be directed to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-7450.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Dated: October 6, 1983.

George A. Fitzsimmons,

Secretary.

Company	File No.	Country
AGA	82-800	Sweden.
AMCA Resources, Ltd	82-434	Canada.
Abitibi Paper Co., Ltd	82-80	Do.
Afrikander Lease Ltd	82-245	South Africa.
Agnico-Eagle Mines Ltd	82-179	Canada.
Alaska Apollo Gold Mines Ltd.	82-643	Do.
Algoma Steel Corp. Ltd	82-99	Do.
Amark Explorations	82-458	Do.
Amerex Development Corp.	82-642	Do.
American Chromium Ltd	82-527	Do.
American Pyramid Resources Inc.	82-384	Do.
Amhawk Resource Corp	83-742	Do.
Amore Resources Inc	82-402	Do.
Anglo American Corp. of South Africa.	82-97	South Africa.
Anglo American Gold Investment Co., Ltd.	82-146	Canada.
Anglo-Bomarc Mines Ltd	82-346	Do.
Arizona Silver Corp	82-419	Do.
Artesian Petroleum Corp	82-541	Do.
ASEA AB	82-736	Sweden.
Associated Recreation Corp.	82-710	Canada.
Aucan Resources Ltd	82-682	Do.
Avalanche Industries Ltd	82-620	Do.
Azora Minerals Inc	82-767	Do.
B. A. T. Industries Ltd	82-33	United Kingdom.
B. M. I. Capital Inc	82-528	Canada.
B. P. I. Resources Inc	82-321	Do.
B. S. N., S. A	82-771	France.
Baker Gold Ltd	82-780	Canada.
Bank of Canton Ltd	82-755	Hong Kong.
Bank of Montreal	82-126	Canada.
Bankeno Mines Ltd	82-162	Do.
Barrick Resources Corp	82-778	Do.
Barrington Properties Ltd	82-719	Do.
Basic Resources S.A	82-203	Luxembourg.
Bearcat Explorations Ltd	82-609	Canada.
Beauty Counselors International Inc.	82-725	Do.
Beaver Resources Inc	82-436	Do.
Beecham Group P.L.C	82-22	United Kingdom.
Belgium Standard Ltd	82-688	Canada.
Belmont Resources Inc	82-686	Do.
Berglynn Resources Inc	82-711	Do.
Black Gold Oil & Gas Ltd	82-703	Do.
Black Hill Minerals Ltd	82-729	Australia.
Bluesky Oil & Gas Ltd	82-473	Canada.
Blyvooruitzicht Gold Mining Co., Ltd.	82-69	South Africa.
The Boots Company P.L.C	82-788	United Kingdom.
Border & Southern Stockholders Trust Ltd.	82-287	Do.
Bowater Corporation P.L.C	82-3	United Kingdom.
Bracken Mines Ltd	82-219	South Africa.
Bralorne Resources Ltd	82-143	Canada.
Brascan Ltd	82-4	Do.
Breakwater Resources Ltd	82-653	Do.
Brican Resources Ltd	82-294	Do.
Bridge Resources Ltd	82-493	Do.
British Columbia Forest Products Ltd.	82-668	Do.
Broken Hill Proprietary Co., Ltd.	82-81	Australia.
Brunswick Oil N.L	82-410	Do.
Buffelsfontein Gold Mining Co. Ltd.	82-302	South Africa.
Burmah Oil Co. Ltd	82-5	United Kingdom.
Butler Mountain Minerals Corp.	82-727	Canada.
C. T. Exploranda Ltd	82-782	Do.
Cadillac Explorations Ltd	82-519	Do.
Cal-Denver Resources Ltd	82-692	Do.
Cal-Dynamics Energy Corp	82-532	Do.
Camflo Mines Ltd	82-193	Do.
Camerco Inc	82-469	Do.
Can-Am Gold Resources	82-700	Do.
Canadex Resources Ltd	82-470	Do.
Canadian Imperial Bank of Commerce.	82-103	Do.
Canadian Barranca Corp., Ltd.	82-292	Do.
Canadian Marconi Co	82-86	Do.
Canadian Natural Resources Ltd.	82-749	Do.
Canadian Pawnee Oil Corp	82-733	Do.
Canadian Tungsten Mining Corp.	82-290	Do.
Canfic Resources Ltd	82-691	Do.
Cape Range Oil N.L	82-623	Australia.
Celanese Canada Ltd	82-171	Canada.
Central Pacific Minerals Ltd.	82-354	Do.
Century Energy Corp	82-640	Do.
Challenger International Services Ltd.	82-369	Do.
Chancellor Energy Resources Inc.	82-487	Do.
Charter Consolidated P.L.C	82-233	United Kingdom.
Chromasco Ltd	82-106	Canada.
Chuang's (Holdings) Ltd	82-769	Hong Kong.
Clear Mines Ltd	82-606	Canada.
Club Mediterranee	82-794	France.
Cochrane Oil & Gas Ltd	82-502	Canada.
Colby Resources Corp	82-417	Do.
Cold Lake Resources Inc	82-793	Do.
Cominco Ltd	82-107	Do.
Computer Services Corp	82-781	Japan.
Concept Resources Ltd	82-405	Canada.
Conex Australia N.L	82-319	Australia.
Conic Investment Co., Inc	82-777	Hong Kong.
Conigas Mines Ltd	82-168	Canada.
Consolidated Bathurst Ltd	82-172	Do.
Consolidated Cinola Mines Ltd.	82-310	Do.
Consolidated Durham Mines & Resources Ltd.	82-176	Do.
Consolidated Gold Fields P.L.C.	82-251	United Kingdom.

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States or subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77 a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)].

Company	File No.	Country
Consolidated Modderfontein Mines Ltd.	82-758	South Africa.
Consolidated Paymaster Resources Ltd.	82-783	Canada.
Consolidated Professor Mines Ltd.	82-625	Do.
Consumers Distributing Co., Ltd.	82-297	Do.
Continental Bank of Canada.	82-120	Do.
Continental Minerals Corp	82-663	Do.
Continental Silver Corp	82-421	Do.
Copper Bounty Mines Ltd	82-694	Do.
Copper Lake Explorations Ltd.	82-394	Do.
Cornwall Petroleum & Resources Ltd.	82-347	Do.
Corrida Oils Ltd	82-720	Do.
Coseka Resources Ltd	82-295	Do.
Cove Energy Corp	82-803	Do.
Cusac Industries Ltd	82-367	Do.
Czar Resources Ltd	82-406	Do.
Dai'Ei Inc.	82-230	Japan.
Dson Development Corp	82-344	Canada.
Datumone Petroleum Ltd	82-543	Do.
DeBeers Consolidated Mines, Ltd.	82-91	South Africa.
Deelkraal Gold Mining Co., Ltd.	82-246	Do.
Dension Mines Ltd	82-155	Canada.
Deutsche Bank A.G.	82-334	Germany.
Dickenson Mines Ltd	82-8	Canada.
Dofasco Ltd.	82-114	Do.
Dominion Explorers Ltd	82-504	Do.
Dominion Textile Co., Ltd	82-113	Do.
Domtar Inc.	82-18	Do.
Donegal Resources Ltd	82-427	Do.
Doornfontein Gold Mining Co., Ltd.	82-213	Do.
D'Or Val Mines Ltd.	82-740	Do.
Double Eagle Energy & Resources Inc.	82-362	Do.
DRC Resources Corp	82-713	Do.
Dresdner Bank A.G	82-229	Germany.
Driefontein Consolidated Ltd.	82-124	South Africa.
Du Pont of Canada	82-19	Canada.
Durban Roodepoort Deep Ltd.	82-156	South Africa.
Dynamar Energy Ltd	82-779	Canada.
Dynamic Oil Ltd	82-702	Do.
Eagle Corp. Ltd.	82-476	Australia.
East Daggafontein Mines Ltd.	82-42	South Africa.
East Rand Gold and Uranium Co., Ltd.	82-289	Do.
East Rand Proprietary Mines Ltd.	82-239	Do.
East West Resource Corp	82-787	Canada.
Eastern Petroleum Australia Ltd.	82-752	Australia.
Economy Inns, Inc.	82-797	Canada.
Elandsrand Gold Mining Co., Ltd.	82-266	South Africa.
Elders IXL	82-762	Australia.
Electra North West Resources Ltd.	82-718	Canada.
Energy Systems Holdings Ltd.	82-621	Hong Kong.
Enexco International Ltd.	82-684	Canada.
Expo Oil N.L.	82-489	Australia.
Exploration Aiguebelle Inc.	82-745	Canada.
F. M. G. Telecomputer Ltd.	82-759	Do.
Fairmont Gas & Oil Corp.	82-629	Do.
Falconbridge Ltd.	82-30	Do.
Fiat S.P.A.	82-116	Italy.
Firan-Glendale Corp	82-600	Canada.
First Houston Oil & Minerals Ltd.	82-651	Do.
Fisons P.L.C.	82-202	United Kingdom.
Flair Resources Ltd.	82-583	Canada.
Flow Resources Ltd.	82-709	Do.
Free State Development & Investment Corp. Ltd.	82-296	Do.
Free State Geduld Mines Ltd.	82-40	South Africa.
Fuji Photo Film Co., Ltd.	82-78	Japan.
Galactic Resources Ltd	82-761	Canada.
Gallahad Petroleum Ltd.	82-454	Do.
General American Properties Inc.	82-588	Do.
Geodome Petroleum Corp	82-744	Do.
Geometals N.L.	82-398	Australia.
Glamis Gold Ltd.	82-689	Canada.
Global Energy Corp.	82-646	Do.
Glaxo Holdings Ltd.	82-10	United Kingdom.
Gold Fields of South Africa Ltd.	82-204	South Africa.
Gold Fields Property Co., Ltd.	82-214	Do.
Gold Hawk Resources Ltd.	82-505	Canada.
Gold Seeker Resources Ltd.	82-724	Do.
Goldale Investments Ltd	82-667	Do.
Golden Sceptre Resources Ltd.	82-754	Do.
Goldrich Resources Inc	82-618	Do.
Goldwinn Resources Ltd	82-555	Do.
Goliath Gold Mines Ltd.	82-741	Do.
Gordon Resources Ltd	82-677	Do.
Gowganda Silver Mines Ltd.	82-513	Do.
Granada Exploration Corp.	82-737	Do.
Great Eastern Mines Ltd	82-732	Australia.
Grootvlei Proprietary Mines Ltd.	82-222	South Africa.
Groundstar Resources Ltd.	82-249	Canada.
Grove Explorations Ltd	82-343	Do.
Gulf Canada Ltd	82-101	Do.
Gulf Leisure International Properties Corp.	82-743	Monaco.
Gulf Titanium Ltd.	82-756	Canada.
Hale Resources Ltd	82-443	Do.
Harmony Gold Mining Co., Ltd.	82-238	Do.
Hartogen Energy Ltd.	82-597	Australia.
Heron Resources Ltd.	82-765	Canada.
Highwood Resources Ltd	82-450	Do.
Highveld Steel & Vanadium Corp., Ltd.	82-596	South Africa.
Himac Resources Ltd.	82-574	Canada.
Hong Kong and Shanghai Banking Corp.	82-683	Hong Kong.
Host Ventures Ltd	82-257	Canada.
Ican Resources Ltd	82-801	Do.
Imasco Ltd.	82-118	Do.
Imperial Group P.L.C.	82-316	United Kingdom.
Indusmin Ltd.	82-201	Canada.
Interaction Resources Ltd.	82-705	Do.
Intercontinential Technologies Corp.[1].	82-697	Do.
Interlake Development Corp.	82-537	Do.
International Phasor Telecom Ltd.	82-678	Do.
International Westward Development.	82-426	Do.
Interstrat Resources Inc	82-708	Do.
Investors Group	82-13	Do.
Irwin Toy Ltd	82-626	Do.
Island Mining & Exploration Co., Ltd.	82-556	Do.
Isuzu Motors Ltd.	82-772	Japan.
Jaffa International Inc	82-726	Canada.
Japan Air Lines	82-122	Japan.
Joutel Resources Ltd.	82-502	Canada.
Kalabara Mining N.L.	82-774	Australia.
Keely-Frontier Resources Ltd.	82-799	Canada.
Kennedy Resources Inc	82-550	Do.
Kerr Addison Mines Ltd	82-14	Do.
Kettle River Resources Ltd.	82-666	Do.
Kinross Mines Ltd.	82-220	South Africa.
Kirin Brewery Co., Ltd.	82-188	Japan.
Kloof Gold Mines Co., Ltd.	82-205	South Africa.
Knie Resources Inc.	82-695	Canada.
Knobby Lake Mines Ltd.	82-336	Do.
Lac Minerals Ltd.	82-198	Do.
Lacana Mining Corp.	82-265	Do.
Laidlaw Transportation Ltd.	82-409	Do.
Lake Shore Mines Ltd	82-15	Do.
LaLuz Mines Ltd	82-237	Do.
Laredo Petroleums Ltd	82-460	Do.
Leader Resources Inc.	82-577	Do.
Leichardt Explorations Ltd.	82-322	Australia.
Lennard Oil	82-298	Do.
Leslie Gold Mines Ltd.	82-223	South Africa.
Les Mines Est-Malartic Ltee.	82-212	Canada.
Libanon Gold Mining Co., Ltd.	82-215	South Africa.
Lincoln Resources Inc	82-349	Canada.
Lintex Minerals Ltd.	82-757	Do.
Lodestar Energy Inc.	82-573	Do.
London Silver Corp	82-802	Do.
Lonrho P.L.C.	82-191	United Kingdom.
L'Oreal	82-735	France.
M. I. M. Holdings Ltd	82-173	Australia.
MacLean-Hunter Ltd	82-485	Canada.
Magnet Metals Ltd	82-299	Australia.
Majestic Resources Corp	82-721	Canada.
Majesty Resources Corp	82-674	Do.
Malartic Hygrade Gold Mines (Canada).	82-687	Do.
Malayan United Industries Berhad.	82-770	Malaysia.
Mammoth Resources Ltd	82-671	Canada.
March Resources Ltd.	82-467	Do.
Mar-Gold Resources Ltd	82-751	Do.
Marievale Consolidated Mines Ltd.	82-224	South Africa.
Marshall Minerals Corp	82-722	Canada.
Megaline Resources Ltd.	82-439	Do.
Mentor Exploration & Development Co. Ltd.	82-178	Do.
Meridian Oil N.L.	82-397	Australia.
Merland Explorations Ltd.	82-595	Canada.
Micro Focus PLC.	82-795	United Kingdom.
Minerals and Resources Corp.	82-206	Bermuda.
Mix Resources Ltd	82-715	Canada.
Monarch Petroleum N.L.	82-339	Australia.
Moet-Hennessy S.A.	82-734	France.
Monte Christo Resources	82-785	Canada.
Mosport Park Corp	82-681	Do.
Mosquito Creek Gold Mining Co.	82-804	Do.
Murgold Resources Inc.	82-786	Do.
Muscocho Explorations Ltd.	82-716	Do.
N. B. U. Mines Ltd.	82-511	Do.
N. R. D. Mining Ltd	82-358	Do.
Neomar Resources Ltd.	82-382	Do.
New Dimensions Resources Ltd.	82-272	Do.
New Frontier Petroleum Inc.	82-341	Do.
Newhawk Gold Minors Ltd.	82-739	Do.
Nexus Resources Corp.	82-679	Do.
Nimslo International Ltd.	82-650	Bermuda.
Nissan Motor Co., Ltd.	82-207	Japan.
Noble Mines & Oils Ltd	82-509	Canada.
Nor-Quest Resources Ltd.	82-374	Do.
Noranda Mines Ltd.	82-158	Do.
North American Power Petroleums.	82-383	Do.
Northair Mines Ltd.	82-305	Do.
Northcal Resources Ltd.	82-768	Do.
Northern Energy Corp.	82-764	Do.
Northern Horizon Resources corp.	82-680	Do.
Nowsco Well Service ltd	82-261	Do.
Nuspar Resources ltd	82-464	Do.
OPI Ltd.	82-693	Do.
Oakwood Petroleums Ltd.	82-564	Do.
O'Brien Energy & Resources ltd.	82-262	Do.
Ocelot Industries Inc.	82-331	Do.
Oliver Resources Ltd	82-664	Do.
Omni Resources Inc	82-385	Do.
Onaping Resources Ltd.	82-273	Do.
Orbex Minerals Ltd.	82-478	Do.
Otter Exploration N.L.	82-320	Australia.
Overseas Inns S.A	82-166	Luxembourg.
P. C. R. Industries Ltd	82-656	Canada.
PLM AB	82-748	Sweden.
Packard Resources Ltd	82-704	Canada.
Pan Canadian Petroleum Ltd.	82-285	Do.
Pan Central Explorations Ltd.	82-432	Do.
Paragon Resources ltd	82-388	Do.
Pawnee Oil Corp.	82-733	Do.
Pecos Resources ltd	82-524	Do.
Pelsart Resources N.L.	82-484	Australia.
Petrogold Resources Ltd.	82-699	Canada.
Petrohunter Energy Ltd.	82-646	Do.
Petrox Energy & Minerals corp.	82-798	Do.
Pezamerican Resources ltd.	82-492	Do.
Philex Mining Ltd	82-136	Philippines.
Pilgrim Coal Corp.	82-706	Canada.
Pola Resources Ltd	82-760	Do.
Pop Shoppes International Inc.	82-256	Do.
Power Corp. of Canada	82-137	Do.
Prairie Pacific Energy Corp	82-456	Do.
President Brand Gold Mining Co., Ltd.	82-39	South Africa.

Company	File No.	Country
President Steyn Gold Mining Co., Ltd.	82-44	Do.
Prism Resources ltd	82-375	Canada.
Quebec Explorers Corp., Ltd.	82-635	Do.
Quebec Sturgeon River Mines Ltd.	82-186	Do.
Queen Margaret Gold Mines N.L.	82-414	Australia.
Quinto Mining corp	82-475	Canada.
Racal Electronics P.L.C	82-481	United Kingdom.
Rainer Energy Resources Inc.	82-560	Canada.
Randfontein Estates Gold Mining Co.	82-267	Do.
Rank Organization P.L.C	82-17	United Kingdom.
Raymac Oil Corp	82-602	Canada.
Rayrock Resources Ltd	82-378	Do.
Reed Stenhouse Companies Ltd.	82-254	Do.
Rio Sierra Silver Corp	82-731	Do.
Rogers Cablesystems Inc	82-335	Do.
Roman Corp. Ltd	82-345	Do.
Rosmac Resources Ltd	82-449	Do.
Rothmans International P.L.C.	82-84	United Kingdom.
Royal Bank of Canada	82-796	Canada.
Ruskin Development Ltd	82-648	Do.
Rustenburg Platinum Holdings Ltd.	82-241	South Africa.
S. K. F	82-139	Sweden.
Sabina Industries Ltd	82-244	Canada.
Samantha Exploration N.L	82-323	Australia.
Samson Exploration N.L	82-401	Do.
Santa Sarita Mining Co., Ltd.	82-338	Canada.
Santos Ltd	82-34	Australia.
Sanyo Electric Co., Ltd	82-264	Japan.
Sasol Ltd	82-631	South Africa.
Saturn Energy & Resources Ltd.	82-613	Canada.
Saxton Industries Ltd	82-790	Do.
Sceptre Resources Ltd	82-387	Do.
Scheer Energy Development Corp.	82-333	Do.
Scintlore Explorations Ltd	82-792	Do.
Scottie Gold Mines Ltd	82-351	Do.
Shadowfax Resources Ltd	82-728	Do.
Share Mines & Oils Ltd	82-508	Do.
Sharon Energy Ltd	82-530	Do.
Shelter Oil & Gas Ltd	82-601	Do.
Sherritt Gordon Mines Ltd	82-29	Do.
Shiseido Co., Ltd	82-225	Japan.
Siemens Aktiengesellschaft.	82-73	Germany.
Silver Tusk Mines Ltd	82-723	Canada.
Silverado Mines Ltd	82-348	Do.
Silvermaque Mining Ltd	82-510	Do.
Sotheby Parke Bernet Group P.L.C.	82-337	United Kingdom.
South Africa Land & Exploration Co., Ltd.	82-59	South Africa.
Source Perrier	82-291	France.
Southern Pacific Petroleum N.L.	82-353	Australia.
Southvaal Holdings Ltd	82-197	South Africa.
Spartan Capital Corp	82-160	Canada.
Spirit Petroleum Corp	82-730	Do.
Spooner Mines and Oils Ltd.	82-112	Do.
St. Helena Gold Mines Ltd	82-232	South Africa.
Stampede International Resources Ltd.	82-242	Canada.
Starburst Energy Corp	82-775	Do.
States Exploration Ltd	82-645	Do.
Stateside Energy Corp	82-544	Do.
Stelco Inc	82-141	Do.
Stilfontein Gold Mining Co., Ltd.	82-301	South Africa.
Strata Energy Corp	82-714	Canada.
Sudbury Contact Mines Ltd	82-180	Do.
Sundance-Gold Ltd	82-717	Do.
Sun Hung Kai Securities Ltd.	82-712	Hong Kong.
Svenska Cellulosa Aktiebolaget SCA.	82-763	Sweden.
Swan Resources Ltd	82-477	Australia.
Sydney Development Corp	82-641	Canada.
Taro-Vit Chemical Industries Ltd.	82-210	Israel.
Taurus Resources Ltd	82-408	Canada.
Telefonos de Mexico S.A	82-332	Mexico.
Telstar Resources Corp	82-701	Canada.
Tenajon Silver Corp	82-738	Do.
Terra Mines Ltd	82-404	Do.
Teva Pharmaceutical Industries Ltd.	82-614	Israel.
Thorn EMI Ltd	82-373	United Kingdom.
Titan Resources Ltd	82-773	Canada.
Toronto Dominion Bank	82-142	Do.
Tournigan Mining Explorations.	82-328	Do.
Trade Development Bank Holding S.A.	82-276	Luxembourg.
Transpacific Asbestos Inc	82-669	Canada.
Transvaal Consolidated Land & Exploration Co.	82-304	South Africa.
Treasure Cay Ltd	82-288	Bahamas.
Treasure Island Resources Corp.	82-750	Canada.
Treasure Valley Explorations Ltd.	82-791	Do.
Tri-Basin Resources Corp	82-468	Do.
Trident Resources Inc	82-707	Do.
Trinity Resources Ltd	82-610	Do.
Trojan Energy Corp	82-698	Do.
Tunkwa Copper Mines Ltd	82-753	Do.
Twentieth Century Energy Fund.	82-352	Do.
Unisel Gold Mines Ltd	82-236	South Africa.
United Cambridge Mines Ltd.	82-746	Canada.
United Greenwood Explorations Ltd.	82-368	Do.
United Keno Hill Mines Ltd	82-61	Do.
United Rayore Gas Ltd	82-747	Do.
United Siscoe Mines Inc	82-194	Do.
Vaal Reefs Exploration and Mining Co., Ltd.	82-56	South Africa.
Venterpost Gold Mining Co., Ltd.	82-216	Do.
Ventora Resources Ltd	82-381	Canada.
Veronex Resources Ltd	82-364	Do.
Versatile Cornat Corp	82-390	Do.
Villebon Resources Ltd	82-676	Do.
Viscount Resources Ltd	82-420	Do.
Blakfontein Gold Mining Co., Ltd.	82-217	South Africa.
Volvo	82-782	Sweden.
Vulcan Industrial Packaging Ltd.	82-300	Canada.
Waddy Lake Resources Inc.	82-607	Do.
Wah Kwong Shipping & Investment Co. (Hong-Kong) Ltd.	82-789	Hong Kong.
Warrior Resources Ltd	82-363	Canada.
Waybo Resources inc	82-768	Do.
Welkom Gold Mining Co., Ltd.	82-57	South Africa.
West Rand Consolidated Mines Ltd.	82-314	Do.
Western Allenbee Oil & Gas Co., Ltd.	82-670	Canada.
Western Areas Gold Mining Co., Ltd.	82-268	South Africa.
Western Deep Levels Ltd	82-58	Do.
Western Holdings Ltd	82-54	Do.
Westfort Petroleums Ltd	82-308	Canada.
Westmount Resources Ltd	82-392	Do.
Wharf Resources Ltd	82-675	Do.
Willanour Resources Ltd	82-63	Do.
Windsor Resources Inc	82-554	Do.
Winkelhaak Mines Ltd	82-221	South Africa.
Wright Hargreaves Mines Ltd.	82-60	Canada.
Yellowknife Bear Resources Inc.	82-776	Do.
Zambia Copper Investments Ltd.	82-227	Bermuda.
Zone Petroleum Corp	82-424	Canada.

[1] Appears on Foreign Restricted List.

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BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Final Environmental Monitoring Plan Guidelines

AGENCY: U.S. Synthetic Fuels Corporation.

ACTION: Publication of Final Environmental Monitoring Guidelines.

SUMMARY: This notice publishes the Environmental Monitoring Plan Guidelines (the "Guidelines") which were adopted in final form on July 28, 1983, by the Board of Directors of the U.S. Synthetic Fuels Corporation to carry out the requirements of Section 131(e) of the Energy Security Act, Pub. L. 96-294, relating to environmental monitoring. Interim Final Guidelines were published in the **Federal Register** on April 1, 1983 (48 FR 14108-14113) and public commens were solicited at that time. Comments were received from industry; federal, state, and local agencies; Congress; and others.

EFFECTIVE DATE: July 28, 1983.

FOR FURTHER INFORMATION CONTACT: Steven M. Gottlieb, Director of Environment, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6316.

For Copies of the Guidelines: Catherine McMillan, Director of Public Disclosure, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6316.

SUPPLEMENTARY INFORMATION:

A. Background

Section 131(e) of the Energy Security Act (Pub. L. 96-294, 42 U.S.C. 8701, 8731) specifies that a Project Sponsor or Sponsors reveiving financial assistance from the United States Synthetic Fuels Corporation (the "Corporation") shall develop, in consultation with the Environmental Protection Agency ("EPA"), The Department of Energy ("DOE"), and appropriate state agencies ("Consulting Agencies"), an Environmental Monitoring Plan ("Plan") acceptable to the Corporation's Board of Directors. These Guidelines set forth the procedural steps to be taken and the broad substantive areas to be addresed in development of such Plans and the Environmental Monitoring Plan Outlines ("Outlines") upon which they are based.

The following section (Section B) discusses the major comments received by the Corporation on its Interim Final Guidelines and the Corporation's responses thereto. Section C describes revisions made to the Interim Final Guidelines by the Corporation based on its own review, i.e., not in response to specific comments received. To the

extent practical, the changes discussed in each of these two sections are presented in the order in which they occur in the Guidelines.

B. Comments Received and Corporation Response

1. *Monitoring required by the Corporation is redundant to regulatory requirements.* New language has been added to Sections IV and VII.B of the Guidelines to clarify that the Corporation does not seek to impose redundant monitoring requirements on the Sponsor. Section IV of the Guidelines has been amended to emphasize that the purposes for including Compliance Monitoring in Outlines and Plans are to enable the Corporation to obtain copies of the monitoring data already being generated pursuant to a Project's permits and other governmental approvals as well as to provide the basis for determining the appropriate scope of Supplemental Monitoring (i.e., monitoring specified in an Outline or Plan which is not required by federal, state, and local permits, approvals, and other regulatory obligation). Language added to Section VII.B further emphasizes that the Corporation does not require any monitoring activities that are redundant to those required by a Project's permits, approvals, or other regulatory obligations.

2. *Monitoring of socioeconomic and water-use impacts should be required as part of the Monitoring Outlines and Plans.* The Corporation has not amended the Guidelines in response to this concern other than to incorporate a minor language change in Section IV to clarify the Corporation's previously stated intention not to require such monitoring in Outlines and Plans but rather to require such monitoring in appropriate cases as part of the Financial Assistance Agreement. The language in Section 131(e) which refers to the "monitoring of environmental and health-related emissions" does not appear to contemplate that socioeconomic and water consumption monitoring would be required pursuant to this provision, and therefore such monitoring is not included in the Guidelines. However, other provisions of the Energy Security Act (particularly Section 131(b)) provide the Corporation with the authority to require such monitoring outside of the Section 131(e) environmental monitoring process. The Corporation recognizes the importance of such monitoring and will require, by specific terms of the Finanical Assistance Agreements, that the Project Sponsor perform socioeconomic and water consumption monitoring in appropriate cases to determine Project-related impacts in these areas. While a formal consultation process between the Sponsor and the Consulting Agencies on these matters is not contemplated by statute, the Corporation intends to consult informally with appropriate agency officials on the scope of these monitoring requirements.

3. *An adequate description of the acceptability criteria is not provided.* The Guidelines have been amended to include the specific criteria by which an Outline or a Plan will be judged by the Corporation to be acceptable or not acceptable (Section VI). These criteria provide specificity to both the Project Sponsor and Consulting Agencies regarding those items which must be included in acceptable Outlines and Plans.

4. *The Corporation and the Consulting Agencies—or, alternatively, the Sponsor—should have the burden of justifying the need to monitor specific unregulated substances and of providing threshold values above which these substances must be monitored.* No amendment has been made in the Guidelines with regard to assigning a burden to any of the parties involved in developing an Outline or Plan requiring them to justify the need for specific monitoring relating to unregulated substances. The Corporation expects that during the consultation process the Project Sponsor and Consulting Agencies will provide justification to one another for proposing to include or exclude specific monitoring activities or protocols in an Outline or Plan. Ordinarily, these exchanges will be sufficient to enable the Sponsor and Consulting Agencies to resolve most issues among themselves. Where disagreement remains, the Corporation will, based on the justification provided, review the merits of each party's opinion as part of its acceptability review of an Outline or Plan. The Corporation feels that this procedure is sufficient to establish sound monitoring Outlines and Plans without assigning a formal "burden"' to any of the parties to the process.

5. *Site-specific monitoring which is not applicable to replication should be required.* No change has been made in the Guidelines' requirements that site-specific monitoring be considered where it would yield information relevant to replication (Section VII.C). Language was added to Section VII.D.4 to clarify that replication refers to development of synthetic fuels plants in the same vicinity or in similar settings. It should be noted that the exemption from site-specific monitoring provided for by the Guidelines is a limited one for two reasons: (1) Site-specific monitoring will often have applicability to project replication for future facilities located in the same area or similar environmental settings and, therefore, would be appropriate as part of the Sponsor's Supplemental Monitoring program, and (2) site-specific monitoring is often required by permit, federal lease, or other requirements, and, therefore, would be included in the Compliance Monitoring section of the Sponsor's Environmental Monitoring Plan.

6. *The monitoring of unit operations for which emissions have been well characterized should not be required.* The Guidelines have been amended (Section VII.C) so that monitoring of emissions will not be required for those unit operations (e.g., certain coal preparation operations) which are common to other industries and for which comprehensive emissions data (including data on unregulated substances of environmental or health concern) are available. Where a substantial emissions data base already exists, further monitoring would be redundant.

7. *Monitoring of wastes disposed of off-site should be required.* The Guidelines have been amended to require Sponsors to monitor solid or hazardous wastes to be shipped off-site when the receivers of such wastes are not required to monitor them (Section VII.D.1). This avoids the situation where potentially hazardous synthetic fuels wastes would not be monitored either at the generating or the receiving end, as would occur in the case of certain synthetic fuels wastes which are presently exempted from hazardous waste regulations under the Resource Conservation and Recovery Act.

8. *A common Worker Registry format should be required or, alternatively, Sponsors should be permitted to develop their own formats.* The Guidelines have been amended to direct the Sponsor to work with the Consulting Agencies to promote a common Worker Registry format (Section VII.D.3). (DOE, in particular, will focus on matters relating to Worker Registries.) A common Worker Registry format would allow the data in the Worker Registries of several Sponsors to be consolidated easily, thus increasing the size of the data base and improving the statistical validity of epidemiological studies utilizing the data. In addition, the Guidelines also direct the Sponsor to maintain the Worker Registry for the life of the Project because it is essential that occupational health and safety data be collected and maintained over a period

of time sufficient to assess the chronic, as well as the acute, occupational health and safety impacts resulting from the construction and operation of synthetic fuels facilities.

9. *The reporting requirements are excessive.* The Guidelines (Section IX) eliminate the requirement for monthly monitoring reports. Requiring monthly reports would place an unreasonable burden on the Sponsor relative to the value of obtaining data on a monthly basis. The data summaries required in the Sponsor's quarterly reports will provide sufficient detail for developing the Corporation's information base. In any event, the Corporation will retain the right of access (through terms of the Financial Assistant Agreement) to the Sponsor's raw monitoring data should the need arise to review these data. The Guidelines (Section IX) also eliminate the requirement for analysis of data in quarterly reports, because the amount of monitoring data generated during each quarter generally would not be sufficient to provide the basis for meaningful statistical analyses of trends and patters. Data analyses continue to be required in annual reports.

10. *Supplemental Monitoring data should be treated as confidential information or, alternatively, Supplemental Monitoring data should be publicly available.* No amendment has been made in the Guidelines' requirements that monitoring information will be made available as authorized by law and that public information requests will be handled in accordance with the Corporation's Guidelines on Disclosure and Confidentiality. Several points are relevant to the comments received. The monitoring information submitted to the Corporation will primarily relate to emissions and ordinarily is not considered to be confidential because it generally cannot be used, absent other data, to deduce proprietary process information. In addition, most monitoring information will be presented in the form of summaries and analyses, which removes it and additional step from compromising proprietary process information. With regard to the specific case of data from the monitoring of environmental control systems which may be considered proprietary, a footnote has been added (Footnote 9) which provides for submission of non-proprietary summaries.

The Guidelines have been amended to require that a Sponsor's Environmental Monitoring Plan identify those types of information that are expected to be proprietary and those that are not (Section X). To facilitate release of non-confidential information, the Corporation will work with each Sponsor to determine, in advance of submission of information, generic areas of information to be generated during monitoring that should not be treated as confidential. Advance determinations will be require Sponsors to make information publicly available which is properly designated confidential; further, a stamp of "confidential" in accordance with an advance determination will not restrict the Corporation from reviewing the appropriateness of any claim of confidentiality in accordance with its "Guidelines on Disclosure and Confidentiality." Where information is properly designated as confidential, the Corporation may, where appropriate, encourage a Sponsor to make information available to interested agencies upon conditions acceptable to the Sponsor.

The Corporation anticipates that most monitoring information can be made available to the Consulting Agencies and, as appropriate, to other interested agencies without requiring a separate formal request to the Corporation to receive each data submittal made by a Sponsor. The public will have access to non-confidential information through minutes of Monitoring Review Committee meetings, quarterly reports, annual reports, and requests for information made under Section 121 of the Energy Security Act.

11. *Interested citizens and agencies other than the Consulting Agencies do not have opportunities to provide meaningful input to (1) the development of Environmental Monitoring Outlines and Plans, and (2) the review of data generated by monitoring activities.* No revisions to the Guidelines were deemed necessary to address this comment. The Corporation makes all Outlines and Plans (including drafts) and Consulting Agency comments publicly available through the Corporation's Public Reading Room (Section X), and encourages state Consulting Agencies to make Outlines and Plans available locally (Footnote 10). The public may comment at any time on these documents. With regard to input by agencies not designated as Consulting Agencies (Section 131(e) designates EPA, DOE, and the appropriate state agencies as the Corporation's sole Consulting Agenices), the Guidelines do not provide for project-specific consultation from other agencies. However, the Corporation has sought, and will continue to seek, input by agencies not designated as Consulting Agencies regarding generic issues, i.e., those which are not specific to any particular Outline of Plan. Also, such agencies can provide (and in some cases already have provided) input relating to project-specific matters to the Consulting Agencies.

The formal mechanism for review of monitoring data and developing recommendations for modification of Monitoring Plans is the Monitoring Review Committee, which is comprised of representatives of the Sponsor, the Consulting Agencies, and the Corporation (Section XI). Other agencies and the public can review such data through access to quarterly and annual monitoring reports and minutes of the Monitoring Review Committee meetings. Further, other agencies and the public may submit comments on any aspect of a Project's monitoring activities.

12. *Supplemental monitoring should be limited by a cost ceiling or a time limitation.* The Guidelines were not amended to require a cost ceiling for Supplemental Monitoring because the Corporation feels that in order for Supplemental monitoring activities to be scientifically sound they should be developed independent of the constraints of such a ceiling. Also, no single method or formula for setting a cost ceiling could properly be applied to all Projects, since the proper level of Supplemental Monitoring required for Projects will vary according to their processes, feedstocks, control technologies, etc., as they relate to potential environmental concerns. Additionally, the Corporation does not believe that fixing a cost ceiling for Supplemental Monotoring is essential because once Outlines and Plans are found acceptable by the Corporation, the scope of the Supplemental Monitoring programs, including specific monitoring tasks, monitoring frequencies, and duration of monitoring, is defined. Furthermore, the offset provision of the Guidelines (Section XI.B.2), which limits the extent of Supplemental Monitoring under normal circumstances to that specified in the Plan, will prevent increases in Supplemental Monitoring costs (see following section).

While no costs ceilings will be imposed, the Guidelines continue to provide that the Corporation will consider the costs to the Sponsor of Supplemental Monitoring relative to its potential benefits as part of its determination of acceptability of both Outlines and Plans (Section VI). However, any explicit cost/benefit approach to setting a cost ceiling would not be practical because the benefits of

each Supplemental Monitoring task cannot readily be quantified, particularly prior to evaluating the results of its implementation.

With respect to imposing a time limitation on Supplemental Monitoring, one of the acceptability criteria added to the Guidelines (Section VI) indicates that Supplemental Monitoring should continue only as long as necessary to produce a statistically sound body of data. The Corporation's intention is that Supplemental Monitoring is not necessarily required for the entire life of a Project, but rather should be continued until consistency in trends and patterns in the Project's emissions can be established with a high degree of certainty. (This does not apply to worker exposure monitoring, medical surveillance, or maintenance of Worker Registries since long-term monitoring, i.e., for the life of the Project, is necessary for meaningful characterization of occupational health and safety impacts.) The Guidelines were amended (Section V.B) to direct the Sponsor to state the approximate duration of each monitoring task in the Outline, and to provide more specific details on duration in the Plan. The duration specified in the Plan can be subsequently modified, as appropriate, to achieve the statistically sound body of data referred to in the Guidelines.

13. *The offset provision is scientifically unsound.* The Guidelines have not been amended with respect to the basic approach of the "offset provision" (Section XI.B.2) which states that under normal circumstances the Corporation will not require Supplemental Monitoring beyond that specified in the Plan unless the costs of the additional requirements have been, or are being, offset by the elimination of comparable costs. (The Guidelines' offset provision applies only to Supplemental Monitoring; the Corporation will not, and indeed cannot, authorize any changes to a Sponsor's Compliance Monitoring tasks.) A minor revision was added in the form of a footnote (Footnote 12) which specifies that offsets will not apply when monitoring tasks are modified or added because of changes in production, process, pollution control, or feedstock.

In the Corporation's view, the fundamental reason that "new" Supplemental Monitoring should not be required without a comparable reduction in existing Supplemental Monitoring requirements is to assure the Sponsor that it will not be subject to the prospect of an ever increasing monitoring burden. Moreover, this approach will ensure that a Sponsor's monitoring focuses on those areas of greater health or environmental concern. It is anticipated that over time some Supplemental Monitoring activities will, in relative terms, be of diminishing importance and can be eliminated or reduced in frequency when important new monitoring activities are deemed necessary. In the event that *all* monitoring activities appear to be essential and none should be eliminated or reduced in frequency—a situation which the Corporation does not "normally" expect to find—important Supplemental Monitoring activities can still be added to a Sponsor's monitoring program because the Guidelines give the Corporation the flexibility not to provide for comparable reductions where appropriate.

14. *Proper maintenance of the Sponsors' monitoring programs is not assured after termination of the Corporation.* The Energy Security Act directs the U.S. Department of Treasury to carry out the Corporation's function after termination of the Corporation.

C. Other Revisions to the Guidelines

The Corporation has made a number of additional revisions to the Guidelines based on its experience in implementing the Interim Final Guidelines and not in response to any particular comments received.

1. *Soil Monitoring.* The Corporation has amended the Guidelines to clarify and limit soil monitoring requirements (Section VII.D.2) so as not to require the Sponsor to monitor soil when no contamination has actually taken place. Soil monitoring, other than that required by permit, is required only when unregulated substances which have the potential to contaminate soil actually come into contact with it (as in the case of a product spill) and have a reasonable likelihood of being present in concentrations of environmental or health concern.

2. *Toxicological Testing.* The Guidelines no longer require that toxicological testing be considered by the Sponsor. This change was made because: (1) Toxicological testing is often open ended and could represent an unreasonable cost burden relative to other parts of the monitoring program; and (2) such testing is in the nature of a research and development function which is more appropriately addressed by federal agencies and research institutions.

3. *Other Supplemental Monitoring.* The Guidelines have been amended to provide that certain types of Supplemental Monitoring, such as ecological monitoring and monitoring of public nuisances (e.g., noise and odor), are not required except where source emissions data and other information indicate there is reason to believe that the Project could cause significant impacts in these areas (Section VII.D.4). The Sponsor is required only to indicate its commitment, in both the Outline and Plan, to perform such monitoring when circumstances warrant, as determined by the Sponsor or the Monitoring Review Committee. Requiring such monitoring when there is no indication of a potential problem would be inappropriate and burdensome.

4. *Monitoring Review Committee.* Two amendments were made to the Guidelines to ensure the timeliness of action of the Monitoring Review Committee and proper documentation of its meetings. First, the Monitoring Review Committee shall meet shortly after the issuance of the annual monitoring report by the Sponsor (Section XI.A). Second, minutes of each Committee meeting will be prepared by the Corporation (Section XI.B.1).

5. *Clarity.* The Corporation has added a definitions section and made numerous organizational and editorial changes to the Guidelines to improve their clarity. Also, specific acceptability criteria have been added (Section VI) to define the basis on which the Corporation's acceptability determinations will be made. Overall, all of the changes made, whether in response to comments or otherwise, have been designed to set forth a clear basis by which the Sponsor can achieve a sound monitoring program.

United States Synthetic Fuels Corporation Environmental Monitoring Plan Guidelines

Contents

I. Purpose

Section 131(e) of the Energy Security Act (Pub. L. 96–294, 42 U.S.C. 8701, 8731) specifies that a Project Sponsor or Sponsors receiving financial assistance from the United States Synthetic Fuels Corporation (the "Corporation") shall develop, in consultation with the Environmental Protection Agency ("EPA"), the Department of Energy ("DOE"), and appropriate state agencies, an Environmental Monitoring Plan acceptable to the Corporation's Board of Directors. In implementing this statutory mandate, the Corporation is utilizing a two-stage approach under which the Sponsor: (1) Develops an *Outline* of its Environmental Monitoring Plan, which will be incorporated into the Financial Assistance Agreement, and (2) develops an Environmental Monitoring *Plan* (based on the Outline) after the Financial Assistance Agreement is executed.

The purpose of these Guidelines is to set forth the procedural steps to be taken and the broad substantive areas to be addressed in developing Outlines and Plans. The Guidelines provide the basis on which the Corporation will determine the acceptability of Outlines and Plans. However, the Guidelines do not specify the substantive details required for an acceptable Outline or Plan since the actual development of an Outline and Plan is the responsibility of the Sponsor, in consultation with the appropriate agencies, and their contents will depend, in part, on the project-specific factors.

II. Statutory Basis

Section 131(e) of the Energy Security Act requires that:

> Any contract for financial assistance shall require the development of a plan, acceptable to the Board of Directors, for the monitoring of environmental and health-related emissions from the construction and operation of the synthetic fuels project. Such plan shall be developed by the recipient of financial assistance after consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, and appropriate state agencies.

The Conference Committee's Joint Explanatory Statement relating to this privision states, in pertient part:

> the monitoring of emissions—gaseous, liquid or solid—and the examination of waste problems, worker health issues and other research efforts associated with any synthetic fuels project * * * will help to characterize and identify areas of concern and develop an information base for the mitigation of problems associated with the replication of synthetic fuels projects. The Corporation is not expected to involve itself in the development or execution of such plans except for the necessary approval. The conferees intend that development of the plans and actual data collection be reserved to the applicants for financial assistance after consultation with appropriate federal and state agencies. (Joint Explanatory Statement of the Committee of Conference; pp. 208–209 of Compilation of the Energy Security Act of 1980.)

III. Definitions

A. *Ambient Monitoring:* Monitoring of substances found (or projected to be found) in a project's emissions and discharges in the unconfined environment, including the air, water, and land in the vicinity of the Project.

B. *Comparable Permit:* A permit for a similar synthetic fuels facility or process, or an analogous facility or process in a non-synthetic fuels industry.

C. *Compliance Monitoring:* Environmental and health monitoring required by federal, state, and local permits, approvals, and other regulatory obligations, including (1) monitoring specified in any federal or state environmental impact statement or agency record of decision relating thereto, and (2) monitoring pursuant to federal or state lease requirements.

D. *Consulting Agencies:* The Administrator of the Environmental Protection Agency, the Secretary of Energy, and appropriate state agencies. The Administrator, the Secretary, and the Governor of the state in which the Project is located each designate a representative to perform the function of the respective Consulting Agency.

E. *(The) Corporation:* The United States Synthetic Fuels Corporation.

F. *Environmental Monitoring Outline (or Outline):* A summary of a Sponsor's monitoring obligations, as described in Section V.B.

G. *Environmental Monitoring Plan (or Plan):* A detailed description of a Sponsor's monitoring obligations, as described in Section V.B.

H. *Financial Assistance Agreement:* An agreement between the Corporation and the Sponsor providing for loans, loan guarantees, price guarantees, or joint venture assistance or a combination thereof.

I. *(The) Guidelines:* The Environmental Monitoring Plan Guidelines of the United States Synthetic Fuels Corporation

J. *Project:* Facilities for the production of synthetic fuels as described in the Financial Assistance Agreement and any dedicated mining operation at the Project site which is wholly or principally controlled by the Sponsor.

K. *Quality Assurance/Quality Control:* Activities and procedures designed to ensure that all information, data, and analyses resulting from monitoring are technically valid, accurate, precise, and reliable.

L. *Source Monitoring:* Monitoring of air emissions, water effluents, and solid wastes which are released from a Project's vents, stacks, pipes, etc., as well as the monitoring of fugitive air emissions from Project-related activity.

M. *Sponsor:* The entity or entities seeking financial assistance for a Project from the Corporation.

N. *Supplemental Monitoring:* Monitoring specified in an Outline or Plan which is not required by Compliance Monitoring.

O. *Worker Registry (or Registry):* A record-keeping system which integrates different types of occupational health and safety information, including worker exposure data, medical records, demographic data, and job classification.

IV. General Approach to Implementing Section 131(e)

The Corporation views the identification and characterization of areas of concern and the development of an information base for the mitigation of problems associated with the replication of synthetic fuels projects to be the fundamental purpose of environmental and health monitoring pursuant to Environmental Monitoring Plans under Section 131(e). Toward this end, the Corporation requires that the Sponsor perform a broad range of monitoring activities related to potential environmental and health impacts of its Project. While socioeconomic and water consumption monitoring are not required pursuant to Section 131(e) (which addresses environmental and health-related emissions), such monitoring will be required, as appropriate, by separate terms of a Project's Financial Assistance Agreement.

Environmental monitoring pursuant to Section 131(e) shall include Compliance Monitoring and, as appropriate, Supplemental Monitoring. Compliance Monitoring, whose fundamental purpose is to fulfill the Sponsor's regulatory obligations, is included as part of Section 131(e) environmental monitoring because the results of such monitoring are necessary both to provide the Corporation with a broad information base that is relevant to replication of

synthetic fuels projects and to provide the basis for evaluating the proper scope of Supplemental Monitoring. Each Sponsor should perform Supplemental Monitoring to provide information not provided by Compliance Monitoring, such as the types and amounts of certain unregulated substances emitted from a synthetic fuel plant.[1] The Sponsor should integrate Compliance and Supplemental Monitoring activities to create a sound monitoring program during the life cycle of the synthetic fuels Project.

The Corporation requires that the Environmental Monitoring Plan be developed in two stages. During the first stage, the Sponsor is required to develop an Environmental Monitoring Outline in consultation with the Consulting Agencies. This Outline, which should contain a general description of the Sponsor's monitoring tasks, must be found acceptable by the Corporation and, for those Projects receiving financial assistance, will be incorporated into the Financial Assistance Agreement. During the second stage, the Sponsor is required, by a date to be fixed in the Financial Assistance Agreement, to develop an Environmental Monitoring Plan in consultation with the Consulting Agencies. This Plan should contain a detailed description, based upon the terms of the Outline, of the specific monitoring tasks to be undertaken in connection with the Project and must also be found acceptable by the Corporation.

V. Developing Environmental Monitoring Outlines and Plans

A. General

To promote the timely development of sound Environmental Monitoring Outlines and Plans, with meaningful input from the Consulting Agencies, the procedural approach set forth below should be used in developing and reviewing Environmental Monitoring Outlines and Plans. In implementing these procedures, several general points relating to the consultation process should be made:

- While the Corporation has the ultimate statutory responsiblity for making acceptability determinations, the Corporation regards the Consulting Agencies' opinions and comments as fundamental to the development of an acceptable Outline and Plan.[2]
- Early meetings between the Sponsor and Consulting Agencies, and communications between them throughout the process of developing an Outline and Plan, are inherent to the Section 131(e) consultation process. At the same time, the Sponsor should bear in mind that it has the responsibility for developing its Outline and Plan and it should not unduly burden the Consulting Agencies in this effort.
- When a Sponsor has already begun to develop its Outline in consultation with the Consulting Agencies, repetition of the procedural steps set forth herein are not required to the extent they have already been effectively performed.
- To maximize coordination among the parties to the process—the Sponsor, the Consulting Agencies, and the Corporation—courtesy copies of all formal communications (draft and revised Outlines and Plans and all correspondence, including Consulting Agency comments and Sponsor's responses) from any party should be provided simultaneously to all other parties.

B. Contents of Outlines and Plans

An Environmental Monitoring *Outline* should be a general description of the Sponsor's Compliance and Supplemental Monitoring tasks. In the Outline, the Sponsor should: (1) Attach the monitoring requirements found in permits which it has already obtained or provide a summary of these requirements; (2) discuss the anticipated monitoring requirements (based on the terms of Comparable Permits) for permits not yet obtained; (3) state what substances will be monitored (both regulated and unregulated); and (4) indicate the general location where the monitoring will take place (i.e., source, ambient, or workplace), the general type of monitoring to be performed (such as high-volume sampler or personal dosimeter), and the approximate duration of monitoring tasks.

The Environmental Monitoring *Plan* should be a detailed description of the monitoring tasks set forth in the Outline. The Plan should include all of the specific monitoring terms and conditions of permits and other approvals, and the specific monitoring tasks relating to Supplemental Monitoring, including sampling, protocols, monitoring site locations, monitoring frequency, monitoring equipment, analytical methods, etc.[3] The Plan should also provide specific details on the duration of each monitoring task. Like the Outline, the Plan should also state what substances will be monitored; if a more detailed list of substances is available at this stage than when the Outline was prepared, such additional detail should be provided. Similarly, if more details are available on Compliance Monitoring requirements, these should also be provided in the Plan.

In developing its Outline and Plan, if the Sponsor is unable to identify the specific unregulated substances which may be of significant environmental or health concern, the Sponsor should provide a list of the classes of substances (e.g., phenols, polynuclear aromatic hydrocarbons, organic sulfur compounds) likely to be present in various emissions, liquid wastes, or solid wastes and the method(s) by which the specific substances within these classes will be identified and monitored.

In both the Outline and Plan, the Sponsor should provide, as appendices, sufficient background information on its Project to enable the Consulting Agencies to evaluate meaningfully the Outline and the Plan. This information should include an overall process description, a process block flow diagram, plot plans and layouts, and a detailed site description. The Sponsor should also make available to the Consulting Agencies and the Corporation studies, reports, data, etc., which are specifically referenced in the Outline or Plan and/or otherwise used to support the Sponsor's monitoring program.

Neither the Outline nor the Plan need be in any particular format, although both should clearly indicate which monitoring tasks fulfill Compliance Monitoring requirements and which represent Supplemental Monitoring. The Sponsor can tailor the format of its Outline and Plan according to its own needs, but consideration should be given to the comments of the Consulting Agencies regarding format.

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[1] The Corporation has previously notified Sponsors that they must consider the monitoring of unregulated substances. (See, e.g., the Corporation's Second Solicitation Section, Section IV.6.a.1, and Third Solicitation Section, Section III.B.6.b.2).

[2] EPA has prepared a monitoring reference manual for synthetic fuels processes ("Environmental Monitoring Reference Manual for Synthetic Fuels Facilities," EPA Document #600/8-83-027, July 1983) which indicates EPA's areas of interest. This manual contains no monitoring requirements; rather, it is a technical reference document which may be used by drafters and reviewers of Environmental Monitoring Plans.

[3] Sponsors may provide in their Outlines details on any or all aspects of environmental monitoring that are at a level of specificity not required in an Outline but appropriate for a Plan. However, the Corporation's acceptability determination regarding the Outline will be based solely on whether the requirements for an Outline have been met.

C. Development of Outlines

The following is the sequence of steps which should be followed in developing Environmental Monitoring Outlines:

- For a Project proposal submitted under the Corporation's first three General Solicitations (or any future comparable solicitation), the Sponsor should initiate preparation of its Outline no later than immediately after passing the Corporation's strength review. If the Sponsor submits a proposal under a "Competitive Solicitation," the technical proposal should include a schedule for preparing an acceptable Outline; the schedule should provide for immediate initiation of Outline preparation if the technical proposal is found acceptable by the Corporation.
- The Sponsor's draft Outline should be submitted to the Consulting Agencies for their review and comment. (The Corporation will notify the Sponsor as to which Consulting Agency officials to contact.) The Sponsor should confer with the Corporation regarding the timing of submission of the draft Outline (as well as the revised Outline) so that an acceptable Outline can be prepared on a schedule consistent with the anticipated Financial Assistance agreement execution date.
- Consulting Agencies should provide written comments expeditiously to the Sponsor on the draft Outline. It is expected that, absent special circumstances, such comments will be provided within five weeks of receiving the draft.
- In responding to the comments of the Consulting Agencies, the Sponsor should prepare a revised Outline and/or should explain (in a cover letter to the Corporation) the specific reason(s) for not including any specific monitoring task suggested by the Consulting Agencies, as well as for not including monitoring in areas covered in the Guidelines.
- The Sponsor's revised Outline and other material submitted in response to the Consulting Agencies' comments should be submitted to the Consulting Agencies for final review.
- Absent special circumstances, the Consulting Agencies should submit to the Corporation their comments on the revised Outline within four weeks of receiving it.
- The Corporation will evaluate the revised Outline and the Consulting Agency comments and will determine the Outline's acceptability. (See Section VI. Determination of Acceptability.)

D. Development of Plans

The sequence for developing an Environmental Monitoring Plan, including the time periods for Consulting Agency comments, is analogous to that for an Outline set forth above. In brielf, the Sponsor develops a draft Plan; it will be reviewed and commented on by the Consulting Agencies; a revised Plan and/or responsive comments will be prepared; final comments will be provided by the Consulting Agencies; and the revised Plan and comments thereon will be evaluated by the Corporation, which will make a determination as to its acceptability.

Each Financial Assistance Agreement will establish a date by which the Sponsor shall submit its final Environmental Monitoring Plan. It is anticipated that the Plan will be required approximately six months after the Financial Assistance Agreement is signed, depending on the complexity of the Plan and other Project-specific circumstances. Following the Plan's submittal, it must be found acceptable by the Corporation within a time fixed in the Financial Assistance Agreement (approximately two months from submission).[4]

VI. Determination of Acceptability

The Corporation will determine the acceptability of an Environmental Monitoring Outline and Plan by evaluating whether the Sponsor has, through its specific treatment of the substantive areas set forth in these Guidelines, developed a sound monitoring program. This evaluation will be performed in the context of the Corporation's overall environmental monitoring goal of identifying and charaterizing areas of concern and developing an information base for the mitigation of problems associated with the replication of synthetic fuels projects.

Specifically, in determining acceptability, the Corporation will consider whether the Sponsor has, in the level of detail appropriate to the Outline or the Plan: (1) Included all known and anticipated Compliance Monitoring tasks; (2) included an appropriate list of unregulated substances or classes of substances to be monitored; (3) proposed monitoring frequencies, locations, methods, and durations which are adequate to produce a statistically valid body of data; (4) developed satisfactory worker exposure and montoring surveillance programs and provided for the development of a Worker Registry; (5) provided for a sound Quality Assurance/Quality Control (QA/QC) program; (6) proposed an adequate reporting and data management program; and (7) committed to performing other monitoring should circumstances indicated that it is warranted, e.g., ecological monitoring and montoring of possible public nuisances.

In determing the acceptability of both Outlines and Plans, the Corporation will consider the Consulting Agencies' comments and monitoring recommendations and the Sponsor's responses to these comments and recommendations. The Corporation will also consider the costs to the Sponsor of monitoring relative to the potential usefulness of this information.

For Projects receiving financial assistance, an Environmental Monitoring Outlines found to be acceptable by the Corporation will then be incorporated into the Financial Assistance Agreement. As a general rule, if the Corporation does not find a Sponsor's Outline to be acceptable, it will not enter into a Financial Assistance Agreement until the Outline is made acceptable. With respect to Environmental Monitoring Plans, failure to submit an acceptable Plan as required by Section 131(e) (as well as failure to properly implement Plans determined to be acceptable by the Corporation) will be addressed under the default and remedy provisions of the Financial Assistance Agreement.

VII. Scope of Monitoring

A. General

Sponsors should monitor during all phases of a Project's life cycle: pre-construction (baseline), construction, operation, and post-operation (facility shut-down and site reclamation). Generally, Compliance Monitoring will be performed during each phase, while Supplemental Monitoring will be applicable primarily to the operational phase of the facility.[5]

B. Compliance Monitoring

A Sponsor's Compliance Monitoring activities are determined by the Project's permit requirements and other regulatory obligations. The Guidelines do not alter, or require duplication of, any Compliance Monitoring activities. Any change in permit conditions or other Compliance Monitoring requirements occurring after an Outline or Plan has been approved by the

[4] Where monitoring activities, e.g., baseline or construction monitoring, are to be initiated prior to a determination of Plan acceptability, the Outline should indicate when this monitoring will begin.

[5] Generally, Supplemental Monitoring during the operational phase would be peformed during steady-state conditions; however, limited Supplemental Monitoring may be required for non-steady-state conditions if significant emissions could occur, such as during a start-up period.

Corporation will automatically change the Outline or Plan accordingly.

C. Supplemental Monitoring

Supplemental Monitoring should be performed by the Sponsor when such monitoring can produce environmental and health data, not otherwise required by Compliance Monitoring, which are relevant to project replication, i.e., data which are applicable to synthetic fuel facilities that may be built in the future using comparable technology or in the same vicinity or in similar settings. In developing it Supplemental Monitoring program, the Sponsor should address as appropriate the generic areas specified in Section D (Substantive Monitoring Areas) which include:

- Identification and characterization (i.e., determining the concentration) of unregulated substances, such as certain trace metals and hydrocarbons, which may be present at levels of significant health and environmental concern, e.g., concentrations which could result in (1) health effects such as carcinogenesis, mutagenesis, teratogenesis, reproductive effects, and other systemic disorders, and (2) environmental effects such as significant impacts on terrestrial and aquatic species.[6]
- Assessment of occupational exposures by performing industrial hygiene monitoring, conducting comprehensive medical surveillance of workers, and establishing a Worker Registry.
- Ecological monitoring where warranted based on the results of Ambient Monitoring (and not otherwise required by permit).
- Public nuisance monitoring (e.g., monitoring of noise and odor).

In identifying and characterizing unregulated substances, the Sponsor is encouraged to consider a two-phased approach. The purpose of the first phase is to identify the substances or groups of substances which are released from a Project, utilizing survey analytical techniques, such as gas chromatography/mass spectroscopy. Using the results of the first phase, monitoring will be redirected in the second phase for the purpose of providing detailed data (e.g., quantities and/or concentrations) on selected substances which are of significant environmental or health concern. (During phase two, some changes in anticipated monitoring tasks may be appropriate; see Section XI.B.2., "Modification of Monitoring Requirements").

In addition, the Sponsor should consider the following points in developing Supplemental Monitoring tasks in its Outline and Plan:

- The Sponsor's Supplemental Monitoring need not include monitoring which is relevant essentially to a specific Project at a specific site unless such monitoring has broader applicability to Project replication. (However, such site-specific monitoring, if required by permit, would be included as Compliance Monitoring in the Outline and Plan.)
- The Sponsor's Supplemental Monitoring need not include monitoring of unit operations which are common to established industries and which have already been well characterized with regard to unregulated substances, e.g., certain coal preparation operations.

D. Substantive Monitoring Areas

As part of a Sponsor's monitoring program (Compliance and Supplemental Monitoring), three generic areas of environmental and health monitoring—source, ambient, and workplace—should be performed. Additional monitoring, such as ecological monitoring, may also be appropriate in some cases.

1. Source Monitoring

- For air emission Source Monitoring, the Sponsor should monitor, as required by permit, for regulated substances, including those covered under applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants (NESHAPs), etc., as well as for unregulated substances which may be emitted in concentrations of significant environmental or health concern.[7]
- For wastewater effluent Source Monitoring, including underground releases and releases into publicly owned treatment works (POTWs), the Sponsor should monitor, as required by permit, for regulated substances including those in NPDES permits or specified by EPA "consent decrees," as well as for unregulated substances which may be discharged in concentrations of significant environmental or health concern. The Sponsor should perform Supplemental Monitoring with regard to wastewater being discharged into POTWs if these facilities are not subejct to monitoring requirements under the National Pollutant Discharge Elimination System (NPDES).
- For solid and hazardous waste monitoring, the Sponsor should monitor such wastes pursuant to the requirements of the Resource Conservation and Recovery Act, as well as for unregulated substances which may be present at concentrations of significant environmental or health concern. The Sponsor need not perform on-site Supplemental Monitoring with regard to solid and hazardous wastes shipped to off-site facilities which is redundant to monitoring required of operators of these facilities.

2. Ambient Monitoring

- For ambient air monitoring, the Sponsor should monitor, as required by permit, those pollutants identified in EPA's PSD and NESHAP s regulations, and applicable state regulations, as well as for unregulated substances which, based on projections or the results of source monitoring, have a reasonable likelihood of being emitted to the unconfined environment and could result in concentrations of significant evironmental or health concern.
- Where the Project will be discharging into surface waters, the Sponsor should monitor, as required by permit, regulated water quality parameters and pollutants as well as for unregulated substances which, based on projections or the results of source monitoring, have a reasonable likelihood of being discharged in concentrations of significant environmental or health concern.
- Where substances have the potential to impact groundwater, the Sponsor should conduct groundwater monitoring to identify contamination from leachates, discharges, or underground injection. Groundwater monitoring includes monitoring as required by the Safe Drinking Water Act, the Resource Conservation and Recovery Act, etc., as well as for unregulated substances which have a reasonable likelihood of being present in concentrations of significant environmental or health concern.
- Where substances come into contact with the soil and have the potential to contaminate it, the Sponsor should monitor such soil for regulated substances as required by permit, as well as for unregulated substances which have a reasonable likelihood of

[6] The Corporation views unregulated substances as including those substances not presently regulated under any law and those which may be regulated under one law but not another. For example, a substance may be regulated under the Occupational Safety and Health Act but not regulated under the Clean Water Act; monitoring for such a substance in the water would be a "Supplemental Monitoring" requirement, but in the workplace would be a "Compliance Monitoring" requirement.

[7] When Project emissions are determined to be below those levels for triggering permit-mandated monitoring (notably for prevention of significant deterioration (PSD) review), monitoring to determine the actual level of emissions (vis-a-vis calculated levels) of regulated substances should be performed where necessary to develop a data base relevant to Project replication. It is expected that such monitoring would be of short duration.

being present in concentrations of environmental or health concern.

3. Worker Health and Safety Monitoring: Worker Registries

• The Sponsor should monitor potentially hazardous substances or conditions at the Project during routine work, maintenance, repair, and sampling activities throughout construction, operation, and decommissioning of the facility as required by the Occupational Safety and Health Administration and any other relevant regulatory agency. The Sponsor should also monitor for unregulated substances which may be present at concentrations of significant health concern in the workplace during operation.

• The Sponsor should develop and maintain a Worker Registry for the life of the Project. The Registry should include information from medical and work histories, physical examinations and industrial hygiene exposure records, and demographic and job category data. Registries should provide information which can be used to determine if health impacts, when identified in workers, are related to various substances or conditions to which workers had been exposed at the Project. The Specific areas covered by the Registry should relate to the known and suspected health concerns associated with the Project and its technology. The Sponsor should work with Consulting Agencies to promote commonality of Worker Registry format for each synthetic fuel technology and to develop the method by which the confidentiality of workers' identities will be protected.

4. Other Monitoring

• The Sponsor should commit to performing ecological monitoring in the event that substances emitted from the Project demonstrate the potential (based on Ambient Monitoring data) to significantly impact terrestrial and aquatic species; however, unless required by Compliance Monitoring, such monitoring should be performed only if the collection of such ecological data would allow the identification and characterization of areas of concern and develop an information base for the mitigation of problems associated with the replication of synthetic fuels plants in the same vicinity or in similar settings.

• The Sponsor should also commit to the monitoring of possible public nuisances, such as noise and odor, in the event that it becomes necessary to address public complaints.

VIII. Quality Assurance/Quality Control

The Environmenal Monitoring Outline and Plan should indicate what Quality Assurance/Quality Control (QA/QC) measures will be taken to assure that environmental and health monitoring data produced will be sound. The Outline should briefly indicate the Sponsor's proposed QA/QC program while the Plan should establish the specific requirements of a comprehensive QA/QC program.[8]

IX. Data Management; Reporting Requirements

The Sponsor should develop a data management program, in consultation with the Consulting Agencies, that addresses the acquisition, storage, retrieval, analysis, and reporting of the monitoring data for the life of the Project. The Sponsor should permanently retain all monitoring records; alternatively, the Sponsor should make the records available to the Corportion for archiving, with the exception of proprietary information, or dispose of them with the written consent of the Corporation. The basic approach for the data management program should be indicated in the Outline and the details of the program should be fully described in the Plan.

The Sponsor should submit to the Corportion quarterly and annual reports containing information, summaries, and analyses as indicated below:

• Quarterly reports should:

—Contain summaries of the environmental and health monitoring data collected during the prior quarter.

—Identify and characterize the unregulated substances present at concentrations of significant environmental and health concern.

—Contain copies of all compliance reports and analyses sent by Sponsors to the regulatory agencies during the prior quarter.

—Describe the Project's permit compliance status, including a description of any significant changes to the terms of permits and notices of violation issued to the Sponsor from the regulatory agencies.

—Identify potential problem areas encountered during the prior quarter, e.g., problems with monitoring techniques/procedures, sampling, quality control, etc., and indicate actual, anticipated, or possible solutions.

—Recommend modification or deletion of Supplemental Monitoring tasks not yielding useful data, including the basis for the recommendation.

• Annual reports should:

—Contain the fourth quarterly report.

—Summarize and analyze the monitoring information from all prior annual reports, the three prior quarterly reports, and the last quarterly report from the previous year, which shall include: (1) Identifying trends and patterns in the data; (2) summarizing and interpreting data from the Worker Registry; and (3) correlating the concentration of unregulated substances being monitored with the operating conditions of the Project and the performance of environmental controls.[9]

—Based upon monitoring data and the reports which have been submitted, indicated if there are any trends of environmental or health concern.

—Indicate whether any of the problem areas identified in previous quarterly or annual reports have been resolved and, if not, what mitigation measures should be taken.

X. Confidential Information

It is expected that, as a general rule, all monitoring data, data summaries, data analyses, reports, etc., provided to the Corporation by the Sponsor will not contain proprietary or otherwise confidential business information. Where certain types of monitoring data could reasonably contain proprietary information, these should be defined in the Environmental Monitoring Plan. Data will not be provided to federal or state agencies except as authorized by law and unless its confidentiality is protected.

The contents of all Environmental Monitoring Outlines and Plans (including drafts and revisions), all formal written comments of the Consulting Agencies on the Outlines and Plans, minutes of Monitoring Review Committee meetings, and all quarterly and annual reports will be publicly available.[10] Public information requests

[8] Federal guidelines on QA/QC are available from EPA and the National Institute for Occupational Safety and Health. See "Development and Validation of Methods for Sampling and Analysis of Workplace Toxic Substances," Research Report DHHS (NIOSH) Publication No. 80-133, September, 1980; "Interim Guidelines and Specifications for Preparing QA Project Plans," EPA Report No. QAMS-005/80, December 29, 1980.

[9] It is expected that the Sponsor will monitor the efficiency of environmental control systems for all Source Monitoring activities; where such monitoring generates proprietary information on such systems, the Sponsor shall provide non-proprietary summaries.

[10] Copies of these documents will be available in the Corporation's Public Reading Room. The Corporation encourages the Consulting Agencies to make these documents available, particularly in the area in which the Project is located.

will be handled in accordance with the Corporation's Guidelines on Disclosure and Confidentiality.

XI. Monitoring Review Committees

A. Membership; Meetings

Each Financial Assistance Agreement will establish a Monitoring Review Committee (the "Committee") consisting of representatives of the Sponsor, the Consulting Agencies, and the Corporation. The Corporation's representative will act as chairperson for the Committee. The Committee will meet, at a mutually convenient time and place, at least once per year, within two months after the issuance of the annual report.

B. Functions

1. *Data Review.* Each Monitoring Review Committee will review the Sponsor's environmental and health monitoring information, including its quarterly and annual reports. The main purpose of this review is to determine if there are any significant findings among the data, e.g., trends or patterns in pollutant releases from the Project which could result in significant health or environmental impacts. The Corporation shall prepare minutes of each meeting which summarize all Committee discussions, findings, and recommendations.

2. *Modification of Monitoring Requirements.* Based on the Committee's ongoing review of monitoring information, members of the Committee can recommend to the Corporation that: (1) Certain monitoring tasks be discontinued, modified or added;[11] (2) new analytical techniques or instrumentation be substituted; or (3) the format of the quarterly and annual reports be changed.

The Corporation, after consultation with all Committee members, will authorize such changes in Environmental Monitoring Plan requirements as are appropriate, after reviewing the reasons therefor. Normally, the Corporation will not require Supplemental Monitoring beyond that specified in the Plan unless the costs of the additional requirements have been, or are being, offset by the elimination of comparable costs.[12]

[11] Where production, process, pollution control, or feedstock changes occur that may reasonably be expected to affect Project emissions, monitoring tasks should be discontinued, modified, or added accordingly. However, modification of the Sponsor's Environmental Monitoring Plan shall have no effect on the Sponsor's monitoring responsibilities under federal, state, and local requirements.

[12] Offsets will not apply when monitoring tasks are modified or added because of changes in production, process, pollution control, or feedstock.

XII. Amendments to Guidelines

Amendments to these Guidelines may be authorized in writing by the Corporation. All Sponsors with projects before the Corporation at the time any amendment is made will be notified immediately of such amendment. Copies of these Guidelines, as amended, will be available in the Corporation's Public Reading Room.

Len C. Axelrod,

Acting Executive Vice President, U.S. Synthetic Fuels Corporation.

October 6, 1983.

[FR Doc. 83-27734 Filed 10-12-83; 8:45 am]

BILLING CODE 0000-00-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-83-058]

National Boating Safety Advisory Council, Hybrid Personal Flotation Device Subcommittee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Hybrid Personal Flotation Device Subcommittee to be held on Tuesday, November 8, 1983, at Stearns Manufacturing Company, Highway 10, Saulk Rapids, Minnesota, beginning at 10:00 a.m. and ending at 2:00 p.m. The agenda for the meeting will be as follows:

1. To discuss the feasibility of possibly granting Coast Guard approval for Hybrid Inflatable Personal Flotation Devices.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend this meeting as well as persons wishing to present oral statements should so notify the Executive Director no later than Friday, November 4, 1983. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. F. Ingraham, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BBS), Washington, D.C. 20593, or by calling (202) 426-1080.

Issued in Washington, D.C., October 6, 1983.

L. C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-27812 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

[CGD-83-054]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Wednesday and Thursday, November 9 & 10, 1983, at the Marriott Pavilion Hotel, One Broadway, St. Louis, Missouri, beginning at 9:00 a.m. and ending at 4:00 p.m. on both days. The agenda for the meeting will be as follows:

1. Introduction of new Council Members.
2. Review of action taken at the 31st meeting of the Council.
3. Members Items.
4. Executive Director's Report.
5. Subcommittee Report on Accident Investigation and Reporting.
6. Subcommittee Report on Hybrid Life Preservers.
7. Subcommittee Report on Manufacturers' Role in Consumer Education.
8. Subcommittee Report on Memorandum of Understanding with the National Marine Manufacturers Association (NMMA).
9. Update on the Diver's Flag Regulation.
10. Presentation on White Water Safety.
11. Update on Alcohol and Boating.
12. Progress Report on the use of Strobe Lights as Visual Distress Signals.
13. Remarks by Chief, Office of Boating, Public, and Consumer Affairs.
14. Reply to Member's Items.
15. Chairman's Session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. F. Ingraham, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-

BBS), Washington, D.C., 20593, or by calling (202) 426–1080.

Issued in Washington, D.C. October 6, 1983.

L. G. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-27808 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

[CGD-83-056]

National Boating Safety Advisory Council, Subcommittee on Accident Investigation and Reporting; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Accident Investigation and Reporting to be held on Tuesday, November 8, 1983, at the Marriott Pavilion Hotel, One Broadway, St. Louis, Missouri, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. To finalize the Subcommittee's report for the full Council.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. F. Ingraham, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BBS), Washington, D.C., 20593, or by calling (202) 426–1080.

Issued in Washington D.C. October 6, 1983.

L. C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-27810 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

[CGD-83-055]

National Boating Safety Advisory Council, Subcommittee on Manufacturers' Role in Consumer Education; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on Manufacturers' Role in Consumer Education to be held on Tuesday, November 8, 1983, at the Marriott Pavilion Hotel, One Broadway, St. Louis, Missouri, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. To discuss the purpose and scope of the Subcommittee's inquiry.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. F. Ingraham, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BBS), Washington, D.C., 20593, or by calling (202) 426–1080.

Issued in Washington, D.C. October 6, 1983.

L. C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-27809 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

[CGD-83-057]

National Boating Safety Advisory Council, Subcommittee on the Memorandum of Understanding With NMMA; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council's Subcommittee on the Memorandum of Understanding with the National Marine Manufacturers Association (NMMA) to be held on Tuesday, November 8, 1983, at the Marriott Pavilion Hotel, One Broadway, St. Louis, Missouri, beginning at 2:00 p.m. and ending at 5:00 p.m. The agenda for the meeting will be as follows:

1. To discuss a draft Memorandum of Understanding between the Coast Guard and NMMA.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Captain R. F. Ingraham, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BBS), Washington, D.C. 20593, or by calling (202) 426–1080.

Issued in Washington, D.C. October 6, 1983.

L. C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 83-27811 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

Safety Defect Investigations of Volkswagen Brake Lines and Fuel Pump Electrical Circuits; Public Proceeding Postponed

The National Highway Traffic Safety Administration has postponed the public proceeding announced in the **Federal Register** of September 16, 1983 (48 FR 41669) regarding its initial determinations of safety related defects in certain vehicles manufactured or imported by Volkswagen of America, Inc. One initial determination covered service braking systems in 1975–1980 Volkswagen Rabbits and Sciroccos manufactured in Germany by Volkswagen A.G. The other initial determination covered certain components of the fuel pump electrical circuit in 1977–1980 Rabbits; 1976–1982 Sciroccos; 1980–1982 Jettas; 1976–1980 Dashers; 1980 Volkswagen pick-up trucks; 1980–1982 Volkswagen convertibles; 1976–1979 Audi Fox and 1980–1981 Audi 400 vehicles manufactured or imported by Volkswagen of America and equipped with gasoline-powered fuel injected engines. The meeting was to be held at 10 a.m. on October 12, 1983, in Room 2230 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, D.C. 20590. It has been rescheduled for 10 a.m. on October 24, 1983 at the same location.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 6, 1983.

George L. Parker,

Acting Associate Administrator for Enforcement.

[FR Doc. 83-27790 Filed 10-7-83; 2:55 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

[Docket No. 83-1W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Florida Gas Transmission Company petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the requirements of 49 CFR 192.611(e)(2) to permit the maximum allowable operating pressure (MAOP) to temporarily continue at 975 psig (72 percent of specified minimum yield strength) (SMYS) for a 4,900-foot section of its 24-inch gas transmission pipeline between MP 679.50 and MP 680.43. The area in which this segment of pipeline is located became a Class 3 location in May 1982, due to the added development of the Pepper Mill Subdivision in Orange County, Florida. Under § 192.611(e)(2), the company has 18 months from that date to confirm or revise the MAOP commensurate with the new class location.

In accordance with an application recently given final approval by the Federal Energy Regulatory Commission (FERC), Docket No. CP74-192, this segment of pipeline is to be converted to liquid petroleum product service, which would make the line subject to Part 195 rather than Part 192. Conversion to liquid service is expected to commence by December 31, 1986. As a result, this segment will need to continue in natural gas service for approximately 3 years after the time has expired for confirmation or revision of the MAOP in accordance with § 192.611(e)(2).

The pipeline was designed for an operating pressure of 975 psig in a Class 1 location. It was tested to 91 percent SMYS (1,230 psig) for a period of 8 hours. The pipeline has been under cathodic protection since original installation in 1959. The operating history of this segment shows there have been no leaks or failures and that the actual maximum operating pressure at the subdivision location has been 950 psig (70 percent SMYS). The replacement that would be required to comply with § 192.611(e)(2) will cost an estimated $500,000. This reconstruction would be unnecessary under Part 195 because liquid pipelines may operate at 72 percent of SMYS.

In response to this petition for waiver, MTB issued a notice of a petition for waiver inviting interested persons to comment (48 FR 36050, August 8, 1983). In this notice, MTB stated that considering the design, operating, and maintenance history, previous testing of the segment of pipeline, and the pending conversion of the pipeline to liquid service, a waiver of § 192.611(e)(2) is justified to permit continued operation of the 4,900 feet of the Florida Gas Transmission Company pipeline between MP 679.50 and MP 680.43 with a design factor of 0.72. MTB proposed to grant such a waiver until such time as this line is taken out of gas service or December 31, 1986, whichever is earlier.

Section 192.611(e)(2) is intended to minimize the possibility of catastrophic pipeline failure in populous areas. Therefore, to help reduce this risk before conversion occurs, a condition of the waiver would be that the hydrostatic pressure test that is required under Part 195, § 195.5(a)(4), for conversion of this segment of pipeline to liquid service shall be done prior to the date that confirmation or revision of the MAOP would otherwise be required under § 192.611(e)(2).

Three comments were received in response to the invitation to comment. All supported the granting of the waiver as proposed by MTB, particularly with the condition that the additional hydrostatic pressure test be conducted as proposed.

In consideration of the foregoing, MTB, by this order, finds that compliance with § 192.611(e)(2) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Florida Gas Transmission Company is granted a waiver from compliance with § 192.611(e)(2) regarding the segment of pipeline discussed above between MP 679.50 and MP 680.43 to permit continued operation with a design factor of 0.72 until such time as the line is taken out of gas service or December 31, 1986, whichever is earlier. The waiver is contingent upon the segment of pipeline being hydrostatically tested as described above.

(49 U.S.C. 1672; 49 CFR 1.53(a); Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C., on October 6, 1983.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 83-27794 Filed 10-12-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

On October 5, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0058
Form Number: 1028
Type of Review: Revision
Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code
OMB Number: 1545-0142
Form Number: 2220
Type of Review: Revision
Title: Underpayment of Estimated Tax by Corporations
OMB Number: 1545-0119
Form Number: 1099R
Type of Review: Revision
Title: Statement for Recipients of Total Distribution from Profit Sharing Retirement Plans and Individual Retirement Arrangements
OMB Number: 1545-0115
Form Number: 1099-MISC
Type of Review: Revision
Title: Statement of Recipients of Miscellaneous Income
OMB Number: 1545-0020
Form Number: 709
Type of Review: Revision
Title: United States Gift Tax Returns
OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Government Financial Operations

OMB Number: 1510-0043
Form Number: TFS-133, TFS-134 and TFS-135
Type of Review: Extension
Title: Notice of Accountability, Electronic Funds Transfer, Federal Recurring Payments
OMB Number: 1510-0029

Form Number: TFS 5118
Type of Review: Extension
Title: Depositor's Application for Payment of Postal Savings Certificates

U.S. Customs Service

OMB Number: None
Form Number: None
Type of Review: Existing Regulation
Title: Foreign Shipper's Declaration
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Dated: October 5, 1983.

Cathy L. Thomas,

Departmental Reports, Management Office.

[FR Doc. 83-27795 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: On October 6, 1983 the Department of Treasury submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634–2179. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 309, 1625 "I" Street NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0124
Form Number: 1120-DISC
Type of Review: Revision
Title: Domestic International Sales Corporation Return—1983, and its related Schedules K, N, and P
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of Government Financial Operations

OMB Number: 1510–0048
Form Number: None
Type of Review: Extension
Title: Minority Bank Deposit Program Savings and Loan Association Certification Form for Admission

Comptroller of the Currency

OMB Number: None
Form Number: None
Type of Review: Existing Regulation
Title: (A) 12 CFR 7.3025 (g)(1)(ii) Appraisal of Property Upon Transfer to Other Real Estate Owned/ Instructions to Appraiser. (B) 12 CFR 7.3025(h) Appraisal of Other Real Estate Owned/Annual.
OMB Reviewer: Judy McIntosh (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Cathy L. Thomas,

Departmental Reports, Management Office.

[FR Doc. 83-27865 Filed 10-12-83; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of a form used in the processing of security clearance for prospective employees.

DATE: Comments must be received by November 15, 1983.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: Charles N. Canestro, United States Information Agency, M/M, 400 C Street, SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review: David S. Reed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–7231.

SUPPLEMENTARY INFORMATION: Title: Foreign Residence Data. Form Number: IAP–10. Abstract: This form is intended to supplement other security investigation forms used in processing security clearances for prospective employees. It is used for the purpose of allowing investigators to contact people in the United States who have knowledge of a candidate's overseas residence and/or employment. By making contacts domestically, USIA can save both time and money that might otherwise be needed in conducting an overseas investigation.

Dated: October 7, 1983.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 83-27813 Filed 10-12-83; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 199
Thursday, October 13, 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).

CONTENTS

1

FEDERAL ELECTION COMMISSION

Federal Register No. 1411

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, October 12, 1983, 10 a.m.

CHANGE IN MEETING: The closed meeting scheduled for this date has been cancelled.

* * * * *

DATE AND TIME: Tuesday, October 18, 1983, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance, Litigation, Audits, Personnel.

* * * * *

DATE AND TIME: Thursday, October 20, 1983, 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility report for candidates to receive Presidential Primary matching funds
Draft Advisory Opinion 1983-25: David Ifshin for Mondale Committee
Draft Advisory Opinion 1983-29: Robert A. Kenealey, for the City and County of San Francisco
Draft Advisory Opinion 1983-30: Mangotich on behalf of Dr. Conrad Joyner
Proposed Revision of 11 CFR 114.3 and 114.4—Communications by Corporations and Labor Organizations
Routine Administrative matters

PERSON TO CONTACT FOR MORE INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202-523-4065.

Marjorie W. Emmons,
Secretary of the Commission.

[S-1450-83 Filed 10-11-83; 3:03 pm]

BILLING CODE 6715-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 6, 1983.

TIME AND DATE: 10 a.m., Friday, October 7, 1983.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will continue the meeting from October 6, 1983.

Item No. 2. Secretary of Labor, MSHA on behalf of Milton Bailey v. Arkansas-Carbona Company, Docket No. CENT 81-13-D. (Issues include determination of the interest to be assessed on back pay awards in discrimination cases under the Mine Act.)

It was determined by a unanimous vote of Commissioners that Commission business required that the meeting on this item be held and that no earlier announcement of the continuation was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1441-83 Filed 10-11-83; 11:22 am]

BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m. Wednesday, October 19, 1983, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 11, 1983.

James McAfee,
Associate Secretary of the Board

[S-1451-83 Filed 10-11-83 3:22 pm]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m. Wednesday, October 19, 1983.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of proposed revision of Regulation X (Rules Governing Borrowers Who Obtain Securities Credit.)
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5-per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 11, 1983.

James McAfee,
Associate Secretary of the Board.

[S-1452-83 Filed 10-11-83 3:37 pm]

BILLING CODE 6210-01-M

5

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 8-83]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral

hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Monday, October 17, 1983 at 10:30 a.m.
Consideration of proposed and final decisions involving claims against the Government of the Czechoslovak Socialist Republic

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. October 7, 1983.

Judith H. Lock

Administrative Officer

[S-1440-83 Filed 10-11-83; 11:21 am]

BILLING CODE 4410-01-M

6

INTERNATIONAL TRADE COMMISSION

Executive Resources Board (ERB)

TIME AND DATE: 3:00 p.m., Wednesday, October 26, 1983.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Issues

1. Review of proposed IDP's for SES members and Executive Development Program participants for FY 1984.
2. Review of nominees for the SES and Managerial Development Programs for FY 1984.
3. Executive Development Seminar for SES candidates.
4. *External Awards*—Roger W. Jones Award.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S-1445-83 Filed 10-11-83; 1:43 pm]

BILLING CODE 7020-02-M

7

LEGAL SERVICES CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 12, 1983.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 8 a.m. to 5 p.m., Thursday, October 13, 1983, at the Sheraton Grand Ballroom, Second floor, Sheraton Hotel, 255 S.W. Temple, Salt Lake City, Utah 84101.

ADDITIONAL AUTHORITY FOR MEETING: While the Board of the Legal Services Corporation believes sufficient notice for this meeting had been given under the Government in the Sunshine Act, 5 U.S.C. 552b, a question has been raised as to the sufficiency of that notice. Therefore, the Board has voted unanimously that the meeting of the Board scheduled to be held October 13, 1983, in Salt Lake City, Utah, is necessary for the conduct of Corporation business and should be held as scheduled. This vote is recorded pursuant to 45 CFR 1622.4(b) and 45 CFR 1601.19(a) and 5 U.S.C. 552b(e)(1). The votes were:

Milton M. Masson (Aye), October 8, 1983
Robert E. McCarthy (Aye), October 10, 1983
Daniel Rathbun (Aye), October 7, 1983
Donald Santarelli (Aye), October 8, 1983

Donald P. Bogard,

President.

[S-1444-83 Filed 10-11-83; 1:18 pm]

BILLING CODE 6820-35-M

8

LEGAL SERVICES CORPORATION

Correction

The announcement of the postponement of the meeting of the Board of Directors of the Legal Services Corporation published in the **Federal Register** on Tuseday, October 11, 1983 (48 FR 46130) was a duplicate of the document filed with the Office of the Federal Register on October 3, 1983, and published in the **Federal Register** on Wednesday, October 5, 1983 (48 FR 45492). This duplicate announcement should not have been published.

BILLING CODE 1505-01-M

9

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

TIME AND DATE: October 17 and 18:

October 17, Monday
10 a.m. to 12 p.m. (open)
12 p.m. to 3:30 p.m. (open)
3:30 p.m. to 4:30 p.m. (closed)
October 18, 1983:
9 a.m. to 12 p.m. (open)

PLACE: National Science Foundation Conference Room, Room 615, 2000 L Street NW.

STATUS: 3:30 p.m. to 4:30 p.m. closed.

MATTERS TO BE DISCUSSED IN CLOSED SESSION: Discussion of Personnel.

FOR MORE INFORMATION CONTACT: Dr. Paul Gottfried, 202–254–7490.

Dated: October 11, 1983.

Dr. Paul Gottfried,

The National Council on Educational Research.

[S-1449-83 Filed 10-11-83; 2:43 pm]

BILLING CODE 4000-01-M

10

NUCLEAR REGULATORY COMMISSION

DATE: Week of October 10, 1983.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: *Thursday, October 13:*

3:00 p.m.
Briefing on Automatic Data Processing Organization (Public Meeting)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

October 6, 1983.

Walter Magee,

Office of the Secretary.

[S-1439-83 Filed 10-11-83; 4:24 am]

BILLING CODE 7590-01-M

11

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATES: 10 a.m., October 19 and 20, 1983.

PLACE: Memorial Coliseum Complex, Wayerhaueser Room, Portland, Oregon.

MATTERS TO BE CONSIDERED:

Council Decision on Draft Report Issued by Salmon and Steelhead Advisory Commission
Council Decision on 1984 Workplans for Yakima Fish Passage Facilities
Status Report on WPPSS Cost-Effectiveness Analysis
Council Business
Public Comment will be taken after each item on the agenda

FOR FURTHER INFORMATION CONTACT: Ms. Bass Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[S-1442-83 Filed 10-11-83; 11:33 am]

BILLING CODE 00000-00-M

12

PAROLE COMMISSION

TIME AND DATE: 9 a.m. to 12:30 p.m., Tuesday, October 18, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

Appeals to the Commission of approximately 10 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S-1446-83 Filed 10-11-83; 1:46 pm]

BILLING CODE 4410-01-M

13

PAROLE COMMISSION

The Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters.

TIME AND DATE: 10 a.m., Thursday, October 13, 1983.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 5 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492–5987.

[S-1447-83 Filed 10-11-83; 1:15 pm]

BILLING CODE 4410-01-M

14

PAROLE COMMISSION

TIME AND DATE:

1:30 p.m. to 5:30 p.m., Tuesday, October 18, 1983

9 a.m. to 5:30 p.m., Wednesday, October 19, and Thursday, October 20, 1983

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1a. Approval of minutes of open meeting of July 26 through July 28, 1983.

1b. Approval of minutes of open telephone conference meeting of August 23, 1983.

2. Reports from the Chairman, Vice Chairman, Commissioners, General Counsel, Director of Research, Case Operations, and Administrative Section.

3. Presentation: Dr. Andrew Von Hirsch (Scheduled for 9 a.m. October 20, 1983.)

4. (Revised 28 CFR 2.63) Rewarding prisoners for cooperation with law enforcement authorities.

5. Proposed extension of Parole on the Record from 90 to 180 days after the record review.

6. (28 CFR 2.20) Offense Severity Items:

a. Possession, Manufacturing, or distribution of Chemical Precursors used in illicit drug manufacturing.

b. Export Offenses.

c. Arson.

d. Perjury/Obstruction of Justice.

e. Possession of a dangerous weapon other than a firearm in an institution.

7. Proposed amendments to provide certain exceptions to the Commission's rule at 28 CFR 2.19(c).

8. Proposed increase in size of quorum for deciding Original Jurisdiction Cases (28 CFR 2.17a and 2.27a).

9. National Appeals Board Rules and Training Aids.

10. Dispositional Revocation Procedures (28 CFR 2.47).

11. Sworn testimony at Revocation Hearings.

12. Orderly incorporation of procedural changes.

Consent Agenda

The following consent agenda items, only if previously requested to be opended for discussion at the meeting on or before October 14, 1983.

13. Procedure Manual Revisions (effective 10/1/83).

14. Computation of the Parole Violator Term for parolees arrested near the end of their sentences.

15. Proposed adoption of 28 CFR 2.36 as a final rule.

16. Release of Juvenile Records.

17 (a) Confirmation of Raymond Essex as Hearing Examiner; (b) Confirmation of Thomas Moss as Hearing Examiner.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission (301) 492–5980.

[S-1448-83 Filed 10-11-83; 1:15 pm]

BILLING CODE 4410-01-M

15

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ACTION: Notice of meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held on the date and at the time and place specified below. This public announcement is made pursuant to the open meeting requirements of Section 116(f) of the Energy Security Act (9 Stat 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Statement of Policy on Public Access to Board Meetings. During the meeting, the Board of Directors will consider a resolution to close a portion of the meeting pursuant to Article II, Section 4 of the Corporation's By-laws, Section 116(f) of the said Act and Sections 4 and 5 of said Policy.

MATTERS TO BE CONSIDERED:

Chairman's Opening Remarks
Approval of Minutes
Operations Report of the Acting Executive Vice President
Consideration of Amendments of Competitive Eastern Province and Eastern Region of the Interior Province Bituminous Coal Gasification Solicitation
Resolution to Close Meeting

Closed Session:

Briefing on Third Solicitation Oil Shale Projects
Review of Status of Gulf Coast Lignite Solicitation
Consideration of Request for Assistnce of Great Plains Coal Gasification Project
Third Solicitation Maturity/Strength Reviews
Consideration of the Enpex and Cottonwood Wash Projects
Other Project Solicitation, Evaluation and Negotiation Matters

In addition, the Board of Directors will consider such other matters as may be properly brought before the meeting.

DATE AND TIME: October 21, 1983 at 8 a.m. (m.d.t.).

PLACE: Hyatt Regency Hotel, Phoenix, Arizona.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone or Mr. Andrew P. Tashman, Legal Services Group (202) 822–6336.

United States Synthetic Fuels Corporation.

Leonard C. Axelrod,

Acting Executive Vice President.

October 11, 1983.

[S-1443-83 Filed 10-11-83; 12:33 pm]

BILLING CODE 0000-00-M

16

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1319]

TIME AND DATE: 7 p.m. (c.d.t.), Tuesday October 18, 1983.

PLACE: Southwestern at Memphis, Edward J. Meeman Center, Clough Hall, Room 200, 2000 North Parkway, Memphis, Tennessee.

STATUS: Open.

AGENDA ITEM: Approval of minutes of meetings held on September 27, 1983.

B—Purchase Awards

*B1. Negotiation 62–940321—Replacement turbine rotor and shaft for Browns Ferry Nuclear Plant, unit 2.

B2. Negotiation J6–833517—Process Computer replacement for Browns Ferry Nuclear Plant Units 1 through 3.

C—Power Items

C1. Renewal of power contract with Franklin, Kentucky.

C2. Agreement with the Board of Trustees of The University of Alabama in Huntsville for cooperation in the development, implementation, and administration of a program to encourage construction of new solar homes.

C3. Supplement to Contract TV–36914A with Battelle-Columbus Laboratories, Columbus, Ohio, to provide for technical assistance and perform technical tasks as requested by TVA.

C4. Letter agreement between the Institute of Internationl Education and TVA whereby TVA will conduct an electric utility engineering training course for approximately 20 project participants from underdeveloped countries.

E—Real Property Transactions

E1. Abandonment of a 9-acre portion of the easement over TVA's Watsuga Hydro-Cranberry, Mountain City tap right of way located in Johnson City, Tennessee—Tract No. MCT–72.

F—Unclassified

F1. Request for approval of Control Data Corporation proposal to license software related to computer assisted piping analysis and support design system developed with TVA funds.

F2. TVA policy code relating to channelization, structural modification, and renovation of waters subject to TVA actions.

*Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 11, 1983.

[S–1453–83 Filed 10–11–83; 4:00 pm]

BILLING CODE 8120–01–M

federal register

Thursday
October 13, 1983

Part II

Department of Health and Human Services

Food and Drug Administration

Vaginal Drug Products for Over-the-Counter Human Use; Establishment of a Monograph; Advance Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 351

[Docket No. 82N-0291]

Vaginal Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing an advance notice of a proposed rulemaking that would establish conditions under which over-the-counter (OTC) vaginal drug products are generally recongized as safe and effective and not misbranded. This notice is based on the recommendations of the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by January 11, 1984 and reply comments by March 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on December 8, 1978 a report on OTC vaginal drug products from the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products. FDA regulations (21 CFR 330.10(a)(6)) provide that the agency issue in the **Federal Register** a proposed rule containing: (1) The monograph recommended by the Panel, which establishes conditions under which OTC vaginal drug products are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it.

In its report, the Panel has recommended the use of various antimicrobials "for relief of minor vaginal irritation and itching," "for temporary relief of minor vaginal irritation and itching," and "for relief of minor vaginal soreness." The Panel is the third OTC advisory review panel to have made recommendations to FDA regarding the use of various OTC drugs in and around the vagina. The Topical Analgesic Panel,s recommendations were published in the **Federal Register** of December 4, 1979 (44 FR 69798), as part of the advance notice of proposed rulemaking for OTC external analgesic drug products; the Antimicrobial II Panel's recommendations were incorporated into the advance notice of proposed rulemaking for OTC antifungal drug products, published in the **Federal Register** of March 23, 1982 (47 FR 12480).

The Topical Analgesic Panel recommended that 0.5 percent hydrocortisone be considered generally recognized as safe and effective for "itchy genital and anal areas." FDA did not dissent from this recommendation. Therefore, as provided in 21 CFR 330.13, this drug was permitted to be marketed OTC. Previously, the drug has been available on a prescription basis only.

The Antimicrobial II Panel recommended that certain antifungals currently available only by prescription be considered generally recognized as safe and effective for "treatment of external feminine itching associated with vaginal yeast (candidal) infection." However, when this recommendation was published in the **Federal Register**, the agency dissented on the Panel's recommendation. The effect of FDA's action was that, in accordance with 21 CFR 330.13, these prescription drugs were prevented from entering the OTC market. The agency stated in its dissent that "self-treating the symptoms of itching around the vagina without knowing or treating the underlying cause of the itching could create a serious health hazard * * *. Furthermore, itching around the vagina can be a symptom of serious systemic disease, such as diabetes, or of a serious gynecological disorder, including trichomoniasis or gonorrhea" (47 FR 12480).

FDA received a number of comments disagreeing with the agency's dissent on the Antimicrobial II Panel's recommendation regarding the treatment of itching around the vagina. These comments asserted that the agency's statements made in response to this recommendation were not consistent with the fact that the agency did not dissent from the recommendation of the Topical Analgesic Panel regarding the use of 0.5 percent hydrocortisone for "itchy genital and anal areas."

The agency notes that the recommendations by the three panels relate to symptoms, such as itching and irritation, that consumers can indentify. The panels recommended that certain antipruritics and antimicrobials/antifungals be generally recognized as safe and effective and available for OTC use to treat these symptoms. The Topical Analgesic Panel recommended hydrocortisone for symptomatic relief of itching in the genital area external to the vagina. The Antimicrobial II Panel and this Panel recommended antimicrobials only for the symptomatic relief of itching, irritation, or soreness. Consumers, however, generally cannot identify the underlying causes of symptoms of this type. And, while the panels were concerned with relieving symptoms only, some of these drugs may actually have an effect on the underlying cause of the symptoms such as candidal infections and other sources of irritation. Yet, the panels were concerned with symptomatic relief only, not treatment, and in fact counseled against self-treatment.

Under the circumstances, the agency believes that the recommendations of the three panels are confusing and possibly contradictory. All three panels have concluded that a woman is unable to self-diagnose and self-treat vaginal infections and that professional consultation is essential for the proper diagnosis and treatment of vaginal infections. Yet, the Antimicrobial II Panel concluded that because vaginal yeast infection is extremely common and recurrent and is the most common cause of intense itching and redness of the vulva, the OTC use of a topical antifungal would be beneficial in

relieving this discomfort until more definitive treament could be obtained. Even though self-diagnosis of candidal infections by a consumer generally is not possible, the Antimicrobial II Panel recommended that an antifungal be available for OTC use with a label warning that if the symptoms did not clear up within 14 days, the woman should consult a physician. The Vaginal Drug Products Panel concluded that proper treatment following professional consultation is essential for vaginal infections, but rationalized that because OTC drug products have been used by women to alleviate symptoms of vaginal irritation, itching, and soreness, they should continue to be available with a label warning that if the symptoms do not resolve in 1 week, the woman should consult a physician.

In light of the different recommendations from the three panels, previous agency actions, and the comments submitted in response to the advance notice of proposed rulemaking for OTC antifungal drug products, there appears to be uncertainty regarding the appropriateness of OTC drug products for treating the symptoms of itching, irritation, or soreness in or around the vagina. The agency is particularly concerned about: (1) the ability of a woman to recognize the nature or cause of the symptom(s) in order to determine which kind of drug product to select to treat them, e.g., an antipruritic or antifungal for the external areas, including the vulva, or an antimicrobial for intravaginal use; and (2) whether 1 to 2 weeks of self-medicating with an OTC drug product may pose an unacceptable delay in seeking professional attention if the symptom(s) are due to gonorrhea, trichomonas, candida, or other organisms that will not be eradicated by topical therapy with OTC drug products. The agency invites specific comment on these issues, and particularly invites comment for gynecolgists, family practitioners, other health professionals, women, and consumer groups dealing with health issues related to women.

As explained in the preambles to the advance notices of proposed rulemaking for antifungal and external analgesic drug products, no final agency decisions were made regarding the panel recommendations. Likewise, the purpose of this advance notice of proposed rulemaking on OTC vaginal drug products is to obtain comment before the agency makes a final decision on the panel recommendations.

In the notice of proposed rulemaking (tentative final monograph) for external analgesic drug products, published in the **Federal Register** of February 8, 1983 (48 FR 5863), the agency tentatively agreed with the Topical Analgesic Panel's recommendation that hydrocortisone can be safely used OTC for external genital itching if accompanied by appropriate warnings. The agency also invited specific comment on this proposal. The agency expects to set forth its position on OTC antifungal drugs for use external to the vagina in its proposed rulemaking (tentative final monograph) on antifungal drug products. The agency's position on the use of OTC drugs to treat conditions within the vagina will be set forth in its proposed rulemaking on vaginal drug products.

The agency is also aware of the Panel's recommendation that the professional labeling of products containing calcium propionate and sodium propionate include the indication "For the treatment of *Candida albicans*." The Panel's recommendation was based on a review of data and information submitted by Wyeth Laboratories on the product Propion Gel(R). This product was also reviewed under the Drug Efficacy Study Implementation (DESI) for a similar indication (for treatment of vulvovaginal candidiasis). In the **Federal Register** of June 4, 1982 (47 FR 24418), FDA published a notice denying a hearing and withdrawing approval of the new application (NDA) for Propion Gel (R) because the drug lacks substantial evidence of effectiveness. In that notice, the agency disagreed with the OTC Panel's recommendation that a professional labeling claim for the treatment of *Candida albicans* be permitted for calcium propionate and sodium propionate. The agency reiterates that conclusion here. Accordingly, FDA considers that professional labeling indication recommended by the Panel for calcium propionate and sodium propionate to be Category II.

In classifying calcium propionate and sodium propionate in Category I for the relief of minor vaginal irritations, the OTC Panel relied on the same studies reviewed and found inadequate by the agency under the DESI program. Because of the inadequacy of those studies and because of the uncertainty about the use of OTC drug products to treat vaginal irritations (discussed above), the agency will not at this time allow into the OTC marketplace products containing calcium propionate or sodium propionate for vaginal use. Sodium propionate and calcium propionate have not previously been marketed in OTC vaginal drug products and, therefore, may not be marketed OTC at this time under the provisions of 21 CFR 330.13. The agency invites comments and data which would support the Panel's recommendation on the safety and effectiveness of sodium propionate and calcium propionate as ingredients in OTC vaginal drug products.

The agency is not aware of the marketing of any drug product containing potassium sorbate as an active ingredient prior to adoption of the Panel's report, although at least one product has entered the marketplace since that time. Because potassium sorbate has not been marketed as a drug to a material extent and for a material time in the United States, the agency considers this ingredient to be a new drug within the meaning of section 201 (p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)). It may not be marketed until FDA has approved a new drug application (NDA) for such use.

FDA is aware that the Panel conducted an extensive review of data and information on the mutagenic and carcinogenic potential of povidone-iodine. The Panel recommended that this ingredient be classified in Category I pending FDA's review of new data that were submitted at the final Panel meeting (Refs. 1, 2, and 3). The agency has reviewed the data and concludes that they do not demonstrate povidone-iodine to be a potential mutagen or carcinogen. However, if any new information shows that the intravaginal use of povidone-iodine poses safety risks requiring immediate action, the agency will provide notice of its determination and take appropriate regulatory action.

FDA is aware that the Panel included in its report a discussion regarding the design of douching equipment. Because douching equipment is considered to be a device and not a drug, the agency is referring that portion of the Panel's report to the Bureau of Medical Devices for consideration. The Panel's discussion on douching equipment will not be further considered by the Office of Drugs.

After reviewing all comments submitted in response to this document, FDA will issue in the **Federal Register** a tentative final monograph for OTC vaginal drug products as a notice of proposed rulemaking. Under the OTC drug review procedures, the agency's position and proposal are first stated in the tentative final monograph, which has the status of a proposed rule. Final agency action occurs in the final monograph, which has the status of a final rule.

The agency's position on OTC vaginal drug products will be stated initially when the tentative final monograph is published in the **Federal Register** as a notice of proposed rulemaking. In that notice of proposed rulemaking, the agency also will announce its initial determination whether the proposed rule is a major rule under Executive Order 12291 and will consider the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The present notice is referred to as an advance notice of proposed rulemaking to reflect its actual status and to clarify that the requirements of the Executive Order and the Regulatory Flexibility Act will be considered when the notice of proposed rulemaking is published. At that time FDA also will consider whether the proposed rule has a significant impact on the human environment under 21 CFR Part 25 (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742).

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC vaginal drug products. Types of impact may include, but are not limited to costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC vaginal drug products should be accompanied by appropriate documentation.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC vaginal drug products submitted for consideration by the Panel. All the submitted information will be put on public display in the Dockets Management Branch, Food and Drug Administration, after November 14, 1983, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, National Center for Drugs and Biologics (HFD–510) (address above).

FDA published in the **Federal Register** of September 29, 1981 (46 FR 47730) a final rule revising the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug review regulations (21 CFR 330.10) were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision is now deleted from the regulations. The regulations now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions which would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application. Further, any OTC drug products subject to this monograph which are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application. Manufacturers are encouraged to voluntarily comply with the monograph at the earliest possible date.

In some advance notices of proposed rulemaking previously published in the OTC drug review, the agency suggested an earlier effective date. However, as explained in a number of tentative final monographs for OTC drug products, the agency has concluded that, generally, it is more reasonable to have a final monograph be effective 12 months after the date of its publication in the **Federal Register**. This period of time should enable manufacturers to reformulate, relabel, or take other steps to comply with a new monograph with a minimum disruption of the marketplace thereby reducing economic loss and ensuring that consumers have continued access to safe and effective drug products.

References

(1) OTC Volume 110057.

(2) Letter of December 27, 1978 from Robert G. Pinco to Armond M. Welch, included in OTC Volume 17BPAIII.

(3) Letter of February 16, 1979 from Robert G. Pinco to Armond M. Welch, included in OTC Volume 17BPAIII.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, a request for data on all active ingredients used in OTC vaginal contraceptives and other vaginal drug products was issued in the **Federal Register** of May 16, 1973 (38 FR 12840).

The Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of those products:

Elizabeth B. Connell, M.D., Chairman
Evelyn M. Benson, R. Ph.
Cynthia W. Cooke, M.D.
Myron Gordon, M.D.
William A. MacColl, M.D.
William H. Pearlman, Ph. D.
Louise B. Tryer, M.D.

The Panel was first convened on August 2, 1973, in an organizational meeting. Meetings at which vaginal drug products were discussed were held on September 28 and 29, October 19 and 20, November 18 and 19, 1973; January 13 and 14, February 8 and 9, March 8 and 9, March 29 and 30, May 9 and 10, June 6 and 7, July 18 and 19, September 20 and 21, November 8 and 9, December 16 and 17, 1974; January 23 and 24, February 7 and 8, March 14 and 15, April 27 and 28, June 23 and 24; July 24 and 25, September 18 and 19, November 7 and 8, December 11 and 12, 1975; February 26 and 27, April 22 and 24, July 22 and 23, August 24 and 25, October 8 and 9, November 19 and 20, December 16 and 17, 1976; January 14 and 15, March 11 and 12, May 20 and 21, June 22 and 23, July 27 and 28, October 1 and 2, November 4 and 5, December 15 and 16, 1977; February 3 and 4, March 13 and 14, April 28 and 29, May 19 and 20, June 8 and 9, July 10, 11, and 31, August 1 and 2, September 28 and 29, and December 7 and 8, 1978.

The minutes of the Panel meetings are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above).

Two nonvoting liaison representatives served on the Panel. Virginia K. Rosenbaum, B.A., served as the consumer liaison. George A. Braun, Ph. D., served as industry liaison, and in his absence, Forrest C. Greenslade, Ph. D. The following FDA employees assisted the Panel: James P. Burns, Jr., Ph. D., served as Executive Secretary until September 1977, followed by A. T. Gregoire, Ph. D., Armond M. Welch, R. Ph., served as Panel Administrator. Lloyd G. Scott, R. Ph., served as Drug Information Analyst until November 1973, followed by Thomas Gingrich, R. Ph., until April 1975, followed by Anne W. Eggers, R. Ph., M.S., until September 1977. Elaine Euchner, R. Ph., served as Drug Information Analyst from April 1978 and William Best, R. Ph., also served from July 1978 until September 1978. George Kerner, M.S., also served as Consumer Safety Officer from February 1975 until July 1977.

The following persons appeared at their own or at the Panel's request to discuss vaginal drug products:

Gary Berger, M.D.
Louis Bleacher
David J. Brusick, Ph. D.
Nancy Chasen
Robert Choate
Richard A. Carchman, Ph. D.
Eugene Conrad, Ph. D.
John C. Cutler, M.D.
Paul A. Fehn, Ph. D.
Matthew Freund, M.D.
Leonard J. Goldwater, M.D.
Forrest C. Greenslade, Ph. D.
Stephen G. Hoag, Ph. D.
Roger Homm, B.S.
Marjorie Horning, Ph. D.
Margaret F. Jones, M.S., M.A.
Maryann Kane
Naomi Kaplan, M.D.
Louis Keith, M.D.
James C. Killeen, Jr., Ph. D.
Ruth Kirschstein, M.D.
S. Robert Kohn, Ph. D.
Eric Kunnas
Bertram Lift
Donald McNellis, Ph. D.
William Masters, M.D.
John Middleton, M.D.
Nathan Millman, Ph. D.
John Mothersell
Robert Pinco, Esq.
Kenneth Rothwell, M.D.
Roger Schnaare, Ph. D.
Daniel Siegel, Ph. D.
Charles Westoff, Ph. D.
Robert J. Weir, Ph. D.
Lillian Yin, Ph. D

No person who so requested was denied an opportunity to appear before the Panel to discuss vaginal drug products.

On January 23 and 24, 1975, the Panel held a symposium concerning scientific aspects of reproduction and fertility control and invited the following participants:

Gerald Bernstein, M.D., Ph. D.
Richard Blandau, M.D., Ph. D.
Forrest C. Greenslade, Ph. D.
Kurt Hirschhorn, M.D.
Sheldon J. Segal, Ph. D.
Thomas Shepard, M.D.
Richard Stambaugh, Ph. D.
Robert Staples, Ph. D.

A symposium on the effectiveness of vaginal contraceptives, which included a segment on consumer concerns about the labeling of vaginal drug products in general, was held on April 28 and 29, 1978, and included the following participants:

William C. Andrews, M.D.
Gary Berger, M.D.
Gerald Bernstein, M.D., Ph. D.
Ron Gray, M.D.
Bernard Greenberg, M.D.
Michelle Harrision, M.D.
Edna Johnson
Philip Kestelman
Jane Menken, Ph. D.
Harold Nash, Ph. D.
Howard Ory, M.D.
Samuel Pasquale, M.D.
Allan Rosenfield, M.D.
Christopher Tietze, M.C.
Ilene Wolcott

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through December 8, 1978 in arriving at its conclusions and recommendations.

In this document the Panel presents its review and proposed monograph for OTC vaginal drug products except contraceptives. That portion of its review which dealt with OTC vaginal contraceptive drug products was published in the **Federal Register** of December 12, 1980 (45 FR 82014).

In accordance with the OTC drug review regulations (21 CFR 330.10), the Panel reviewed OTC vaginal drug products with respect to the following three categories:

Category I. Conditions under which OTC vaginal drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC vaginal drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. Submission of Data and Information

A. Submissions by Firms

Firm	Marketed products
Aloe Vera of America, Garland, TX 75042.	Vagistat Vaginal Douche, Vagistat Vaginal Cream.
Beecham, inc., Clifton, NJ 07012.	Massengill Liquid Douche Concentrate.
Block Drug Co., Inc., Jersey City, NJ 07302.	Femicare Vaginal Douche Powder.
Boyle & Co., Los Angeles, CA 90022.	Triva Douche Powder.
Bristol-Meyers Co., New York, NY 10022.	Feminique Douche Liquid Concentrate.
G. M. Case Laboratories, San Diego, CA 92103.	PAF Douche Powder.
Chattem Drug & Chemical Co., Chattanooga, TN 37409.	Meta-Cine Douche Powder Concentrate, Pamprin Concentrated Douche Powder.
Julius Schmid, Inc., New York NY 10019.	Vagisec Liquid.
McKesson Laboratories, Fairfield, CT 06430.	V. A. Douche Powder.
Meri Jo, Inc., Tampa, FL 33614.	Fine's Hygienic Powder.
Norcliff Laboratories, Inc., Fairfield, CT 06430.	Zonite Douche, Zonitors Feminine Deodorant Suppositories.
Phenex Laboratory, Inc., Chicago, IL 60641.	Complete Feminine Hygiene Antiseptic Deodorant Douche, Phenex Vaginal Hygiene Suppositories, Phenex Vaginal Therapeutic Suppositories.
The Purdue Frederick Co., Norwalk, CT 06856.	Betadine Douche.
Reed and Carnrick Pharmaceuticals, Kenilworth, NJ 07033.	Cleansing Douche Powders, Trichotine Liquid Douche Concentrate, Trichotine Vaginal Douche.
Rystan Co., Inc., White Plains, NY 10605.	Prophyllin Powder.
R. Schattner Co., Washington, DC 20016.	Gynaseptic Vaginal Solution, Gynaseptic Vaginal Ointment.
Wyeth Laboratories, Inc., Philadelphia, PA 19101.	Propion Gel.

In addition, the following firms, groups, or individuals provided related information:

Carol Angle, M.D., University of Nebraska Medical Center, Omaha, NE 68105.—Camphor.

Beecham Products, Clifton, NJ 07012.—Boric Acid, Lactic Acid.

Center for Science in the Public Interest, Washington, DC 20036.—Talc.

Cosmetic, Toiletry and Fragrance Association, Washington, DC 20005.—Talc.

Foster D. Snell, Inc., General Laboratories, Florham Park, NJ 07932.—Pressure effects of douching.

International Playtex, Inc., Dover, DE 19901.—Polysorbate 20.

F. Nakamura, M. D., California State University, 1250 Bellflower Blvd., Long Beach, CA 90840.—Potassium Sorbate.

Ortho Research Foundation, Raritan, NJ 08869.—Selected bibliography on vaginal contraception and therapeutics.

Proprietary Association, Washington, DC 20006.—Indication language.

U.S. Borax Research Corp., Anaheim, CA 92801.—Boric Acid.

Vicks Chemical Co., Research Division, Mount Vernon, NY 10553.—Vaginal Douche delivery systems.

Young's Drug Products Corp., P.O. Box 385, Piscataway, NJ 08854.—Polysorbate 20.

B. Ingredients Reviewed by the Panel

1. *Labeled ingredients contained in OTC vaginal drug products.*

Alcohol
Alky aryl sulfonate
Allantoin
Alum
Alum (ammonium)
Amerchol L 101
Aromatic oils
Aromatics
Beeswax
Benzalkonium chloride
Benzethonium chloride
Benzocaine
Boric acid
Boro-glycerine
Calcium propionate
Camphor
Cetyl alcohol
Chlorothymol
Citric acid
Cocoa butter
Color
Disodium edetate
Eucalyptol
Fragrance
Glycerin
Glycerine
Hexachlorophene
Isopropyl myristate
Lactic acid
Lactose
Menthol
Methylparaben
Methyl salicylate
Octylphenoxy polyethoxyethanol, octylphenoxy polyethoxy ethanol
Oil of eucalyptus
Oil of peppermint
Oxyquinoline citrate
Oxyquinoline sulfate
Papain
Phenol
Polyoxyethylenenonyl phenol
Polyoxyethylene nonyl phenol
Polysorbate 20
Potassium aluminum sulphate
Potassium hydroxide
Povidone-iodine
Propylene glycol
Propylparaben
Propyl paraben
Purified water
Silica
Sodium bicarbonate
Sodium borate
Sodium carbonate
Sodium chloride
Sodium dioctyl sulfosuccinate
Sodium edetate
Sodium lactate
Sodium lauryl sulfate
Sodium perborate
Sodium phenolate
Sodium propionate
Sodium salicylate
Sodium salicylic acid phenolate
Sodium sulfate
Stabilized aloe vera gel
Steric acid
Talc
Tartaric acid
Thymol
Tragacanth
Vitamins D and A
Water soluble ingredients of chlorophyll
Zinc sulfate
Zinc sulphate

2. *Other ingredients reviewed by the Panel.*

Acetic acid (vinegar)
Potassium sorbate
Talc

C. Classification of Ingredients

The Panel adopted and used for the ingredients reviewed in this document nomenclature based on the currently accepted terminology stated in the 1978 edition of "USAN and the USP Dictionary of Drug Names." Any ingredients which do not have names established in USAN will be referred to by names recommended by FDA.

1. *Active ingredients.*

Acetic acid (vinegar)
Alkyl aryl sulfonate
Allantoin
Alum
Alum (ammonium)
Benzaklonium chloride
Benzethonium chloride
Benzocaine
Boric Acid
Boroglycerin (boro-glycerine)
Calcium propionate
Citric acid
Dioctyl sodium sulfosuccinate (sodium dioctyl sulfosuccinate)
Edetate disodium (disodium edetate)
Edetate sodium (sodium edetate)
Ergocalciferol (Vitamin D)
Hexachlorophene
Lactic acid
Nonoxynol 9 (nonyl phenoxy polyoxyethylene ethanol, nonylphenoxypotyethoxyethanol, polyoxyethylenenonyl phenol, polyexyethylene nonyl phenol)
Octoxynol 9 (octoxynol, octylphenoxy polyetnoxyethanol, octylphenoxy polyethoxy ethanol, *p*-Diisobutylphenoxypdyethoxyethanol, polyethylene glycol of mono-iso-octyl phenyl ether)
Oxyquinoline citrate
Oxyquinoline sulfate
Papain
Phenol
Phenolate sodium (sodium phenolate)
Potassium aluminum sulphate
Potassium sorbate
Povidone-iodine
Sodium bicarbonate
Sodium borate
Sodium carbonate
Sodium lactate
Sodium lauryl sulfate
Sodium perborate
Sodium propionate
Sodium salicylate
Sodium salicylic acid phenolate
Stabilized aloe vera gel
Tartaric acid
Vitamin A
Zinc sulfate (zinc sulphate)

2. *Inactive ingredients.*

Alcohol
Amerchol L 101
Aromatic oils
Aromatics
Beeswax
Camphor
Cetyl alcohol
Chlorothymol
Cocoa butter
Color
Eucalyptol
Fragrance
Glycerin (glycerine)
Isopropyl myristate
Lactose
Menthol
Methylparaben (methyl paraben)
Methyl salicylate
Oil of eucalyptus
Oil of peppermint
Polysorbate 20
Potassium hydroxide
Propylene glycol
Propylparaben (propyl paraben)
Purified water
Silica
Sodium chloride
Stearic acid (steric acid)
Sodium sulfate
Talc
Thymol
Tragacanth
Water soluble ingredients of chlorophyll

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include the submissions made by interested persons in response to the call-for-data notice published in the **Federal Register** of May 16, 1973 (38 FR 12840). All of the information included in these volumes, except for those deletions which are made in accordance with the confidentiality provisions set forth in § 330.10(a)(2) November 14, 1983, will be put on public display afterin the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Line Rockville, MD 20857.

II. General Discussion

A. Introduction

When it first convened, the Panel considered its specific mandate and general objectives. It recognized that its primary concern must be the evaluation and categorization of the ingredients under its review as defined by the enabling regulation; however, it was also deeply concerned about the health of women and their offspring, the latter both during intrauterine life and after birth. The Panel, therefore, concluded that, as a part of its mandate, it would give special attention to the issues involved in labeling and patient instruction, effectiveness rates, delivery

systems, vaginal absorption, fetal and infant damage, mutagenicity, and carcinogenicity.

The Panel believes that it is particularly important for OTC vaginal drug product labeling to explain what benefits consumers can expect from the use of such products. For example, the labeling of contraceptive agents should clearly state that the use of such products is intended for the prevention of pregnancy. Conversely, the labeling of vaginal douches should clearly reveal the probable failure of such products when used for the prevention of pregnancy.

The Panel considers it essential, because proper use is important both in relation to safety and effectiveness, that each vaginal product be accompanied by instructions which are written in a manner easily understood by the average consumer.

Regarding vaginal douches, the Panel considers appropriate douching methods and the design of douching equipment to be as important for the safe and effective use of vaginal douches as the ingredients. Therefore, the Panel has devoted a section of this document to the methodology of douching and the design of the equipment. (See part IV. paragraph G. below—Vaginal Douche Equipment.)

The Panel also recognizes that OTC vaginal drug products might be used by the consumer inadvertently during early pregnancy. Moreover, these products might be used during lactation. The Panel has, therefore, included considerations of fetal and infant safety in this document.

The Panel also considered mutagenic and carcinogenic potential, a relatively new aspect of ingredient and product safety. Several ingredients under review have been subjected to in vitro or in vivo (animal) screening, or both, for mutagenic-carcinogenic potential.

The Panel is also concerned about the lack of information on the possible absorption of these ingredients from the vagina into the systemic circulation. It has been well established that many ingredients can be absorbed in this manner. The Panel recognizes that the potential for the development of toxicity and sensitivity reactions is theoretically greater with the use of vaginal suppositories than with vaginal douches. Nonliquid vehicles, which are designed to keep the medication in the vagina for a longer period, allow greater opportunity for systemic absorption. The significance of this factor is unknown, because there are no relevant data available at the present. However, since the technology required to generate information in this area is now becoming available, the Panel recommends that appropriate vaginal absorption studies be conducted on all of these ingredients wherever feasible.

B. Data Search

Prior to the information of the Panel, the FDA Medical Library conducted a literature search covering relevant American publications between 1950 and 1973. Additionally, interested people and firms submitted data on the ingredients and products which were to be reviewed. After a thorough review of these data, the Panel noted that the majority of the references cited were 10 years old or older. Virtually no studies could be found which had been carried out in accordance with today's standards for the evaluation of possible teratogenic, mutagenic, carcinogenic, or toxic effects of the ingredients in these products.

Because there was very little information in both the submissions and the FDA literature search, the Panel conducted its own independent review of the pertinent world literature and asked medical and scientific journals to run advertisements requesting additional data. However, only a limited amount of new material was obtained as a result of these efforts.

At the Panel's request, the industry liaison submitted, in April 1974, a listing of articles entitled "Selective Biblography on Vaginal Contraception and Therapeutics" compiled by the Science Information Division of the Ortho Pharmaceutical Corporation. In addition, the Panel listened to testimony from interested parties and a number of invited consultants.

In summary, using every means at its disposal, the Panel attempted to gather and review all of the information available on the subjects under consideration before arriving at its conclusions and recommendations. However, the combined efforts described above served to substantiate the original observation that very little work had been done in this field in recent years.

C. Vaginal Anatomy and Physiology

The Panel reviewed both OTC vaginal contraceptives and other vaginal drug products. The background section on anatomy and physiology of the vagina was published in the **Federal Register** of December 12, 1980 (45 FR 82014) and will not be repeated in this document.

D. Drug Evaluation for Safety and Effectivensss

1. *Safety.* As all of the ingredients under its review are applied to the vagina, the Panel believes that the guidelines for safety testing are identical no matter what the ingredient, the vehicle, or the drug's intended pharmacological purpose. Although the Panel's discussion on safety testing as published in the **Federal Register** of December 12, 1980 (45 FR 82014) will not be repeated in this document, the Panel has included a comment on the safety of inactive ingredients contained in vaginal drug products (See part IV. paragraph D. below—Inactive Ingredients—Comments on Safety).

2. *Effectiveness.* Testing guidelines for vaginal drug products are outlined elsewhere in this document. (See part IV. paragraph F. Below—Testing Guidelines for Effectiveness of Vaginal Drug Products.) That portion of the Panel's review which deals with the effectiveness testing of vaginal contraceptive drug products was published in the **Federal Register** of December 12, 1980 (45 FR 82014).

E. Advertising

The Panel is aware that FDA has jurisdiction over the labeling but not the advertising of OTC drugs. Having completed its review of labeling provided in the submitted data and information, the Panel is concerned that control of labeling alone may be insufficient to assure the safe and effective use of vaginal drug products.

The Panel, therefore, concludes that the advertising of these products must be carefully monitored by those having the appropriate jurisdiction. Such advertising should carry over, reflect, or incorporate the approved terms and statements found in product labeling in the monograph which specify the indications for use, contraindications, and appropriate warnings to the consumer.

F. Labeling

The Panel reviewed the general and specific labeling requirements previously adopted by FDA for OTC drug products in Part 201 (21 CFR 201) and Part 369 (21 CFR 369). These regulations relate to labeling information concerning the identity of ingredients, directions for use, and general and specific warnings. The Panel considered these regulations and concludes that, in general, these requirements are appropriate for OTC vaginal drug products. The term "labeling," as understood by the Panel, refers to any language developed for the consumer and placed upon the carton, the container, and package inserts. Any special labeling which the Panel believes is indicated for a particular

ingredient will be included in the ingredient evaluations below.

According to its mandate, the Panel reviewed and classified all of the labeling terms on the products submitted. Those terms classified in Category I are appropriate and may continue to be used. Terms in Category II are vague, poorly defined, or apt to promote impressions of unproven effectiveness. The Panel believes that the claims in Category III are potentially provable by scientific methods, but adequate data were not submitted to allow their approval as Category I claims. Any manufacturer who wishes to perform the necessary research to substantiate such claims should do so and submit the results to FDA for approval.

After careful consideration of all labeling submitted, the Panel recommends the following general labeling guidelines:

1. *Indications for use.* The indications for use should be simply and concisely stated. They should enable the consumer to have a clear understanding of the results which can be anticipated from the use of the product. Any statement regarding the indications for use should be specific and should be confined to the conditions for which the product is being recommended. A vaginal drug product may not contain additional indications for use on other areas of the body unless there are sufficient valid data to support such claims.

Claims of therapeutic benefit for treatment of specific vaginal infections must be restricted to professional labeling, e.g., for the treatment of trichomoniasis or moniliasis. Furthermore, any claim of such therapeutic benefit shall be based upon valid studies of effectiveness, by documenting cures proven by repeated cultures following the treatment regimen outlined for each specific infection for which a professional labeling claim is to be made.

2. *Ingredients.* The Panel concludes that it is important for the consumer to know all of the ingredients in a product because of the possibility of allergic states and idiosyncracies. For example, although aromatic compounds such as perfumes have no pharmacologic activity in vaginal drug products, these agents should be listed on the label because of their potential to sensitize. Although the Panel recognizes that current statutes require that only the active ingredients be listed, it strongly recommends that all inactive ingredients (including those which are necessary for formulation and product identification) also be listed, preferably with a statement of their quantity in metric units. The Panel further concludes that no product should be promoted on the basis of its inactive ingredients, nor should the label create a false impression of value beyond that which is scientifically valid.

3. *Principal display panel.* The Panel is aware of the current regulations regarding the principal display panel, statement of identity , and the declaration of net quantity of contents for OTC drugs and concurs with those requirements (21 CFR 201.60, 201.61, and 201.62).

4. *Effectiveness and claimed advantages.* After reviewing the claims made by manuffcturers of vaginal drug products, the Panel concludes that certain claims for effectiveness have been made in the past without valid supporting data. Any language which promises specific health benefits which are unsubstantiated by the scientific information submitted is unacceptable. Futhermore, claims may not be used to promote the sale of these products unless these claims are specifically approved by the panel as set forth in this document. For example, manufacturers may not make use-effectiveness or comparative-effectiveness claims such as "better than" or "the most" unless valid scientific data have been provided upon which to base these claims. Further details on specific claims will be included in the appropriate sections of this document.

5. *Directions for use and warnings.* The label should consist of a clear statement of the usual effective dose. The phrase "except under the advice and supervision of a physician" should appear where appropriate. When an ingredient is known to induce a somewhat higher than average incidence of hypersensitivity reactions, an additional warning stating this fact should be included on the label.

G. Combination Policy

The Panel notes the regulation in 21 CFR 330.10(a)(4)(iv) which states:

> An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The Panel observed that a number of the vaginal preparations under its review contain multiple ingredients. However, the Panel concludes that, in general, the fewer ingredients in a combination product, the safer and more rational the therapy. It further concludes that consumers should be exposed to the fewest possible ingredients and at the lowest possible dosage consistent with a satisfactory level of effectiveness. Thus, in gereral, OTC products containing a single, safe, and effective active ingredient are to be preferred over those having multiple active ingredients. Such an approach is totally in accord with established medical principles and will reduce the risks of toxic, allergic, or idiosyncratic reactions, as well as the possibility of unrecognized or undesirable drug interactions. The Panel concludes that OTC combination drugs should contain only those inactive ingredients which are absolutely essential for pharmaceutical necessity of product indentification. As previoulsy stated, the Panel believes that a listing of these inactive ingredients and the quantities present should be included in the product labeling. (See part II. paragraph F. above-Labeling.)

The Panel concludes that combination vaginal drug products should contain more than one active ingredient only if each of the ingredients is not only safe, but also makes a clear and specific contribution to the claimed effectiveness of the product.

1. *Combinations of Category I ingredients.* With regard to the vaginal products under its review, the Panel concludes that there are insufficient data to support combining any two or more Category I ingredients. Therefore, if a manufacturer combines two or more Category I ingredients, the specific ingredients as well as the combination product must be subjected to laboratory and clinical testing using the recommended testing guidelines for effectiveness outlined elsewhere in this document. (See part IV. paragraph F. below—Testing Guidelines for Effectiveness of Vaginal Drug Products.)

2. *Category II combinations.* The Panel concludes that any combination vaginal drug product which contains a Category II ingredient is to be placed in Category II. The Panel fully realizes that its recommendation pertains to the drug use of these combination products and not to the cosmetic use. However, the Panel recommends to FDA that any Category II ingredient which causes a combination product to be placed in Category II by virtue of its lack of safety be removed from the product regardless of whether its intended vaginal use is as a drug or as a cosmetic. This recommendation is made to ensure that

the consumer is not exposed to ingredients which this Panel has judged to be unsafe.

The following combinations reviewed by the Panel contain at least one Category II ingredient. The Panel therfore concludes that these combinations are unsafe or ineffective for any OTC vaginal use.

a. Hexachlorophene, boric acid, zinc sulfate, potassium aluminum sulphate, tartaric acid, camphor, phenol, and octoxynol 9.

b. Phenol (greater than 1.5 percent), sodium borate, and sodium salicylate.

c. Sodium salicylic acid phenolate (greater than 1.5 percent phenol), boroglycerin (greater than 1 percent boron), and benzocazine.

d. Sodium salicylic acid phenolate (greater than 1.5 percent phenol), boroglycerin (greater than 1 percent boron), benzocaine, and povidone-iodine.

3. *Category III combinations.* The Panel concludes that available data are insufficient to permit final categorization of the following combination products.

The Panel recommends that these combinations be subjected to the appropriate testing guidelines for effectiveness for the specific indication which is claimed. (See part IV, paragraph F. below—Testing Guidelines for Effectiveness of Vaginal Drug Products.) If any of the ingredients in these combinations require evaluation for safety, this evaluation should be done in accordance with the safety guidelines contained in part II, paragraph D—Drug Evaluation for Safety—of the Panel's review of OTC vaginal contraceptive drug products published in the **Federal Register** of December 12, 1980 (45 FR 82020).

a. Citric acid and papain.

b. Oxyquinoline sulfate, alkyl aryl sulfonate, and disodium edetate.

c. Nonoxynol 9 and sodium edetate.

d. Alum (ammonium) and zinc sulfate.

e. Benzalkonium chloride and disodium edetate.

f. Sodium lactate, lactic acid, and octoxynol 9.

g. Phenol and sodium phenolate.

h. Sodium lauryl sulfate, sodium bicarbonate, and sodium carbonate.

i. Stabilized aloe vera gel, allantoin, vitamin A, and vitamin D.

j. Sodium perborate, sodium borate, and sodium lauryl sulfate.

k. Oxyquinoline citrate, boric acid alum, and zinc sulfate.

l. Sodium lauryl sulfate, sodium perborate, and sodium borate.

m. Calcium propionate, sodium propionate, and boric acid.

n. Sodium borate and sodium lauryl sulfate

III. Vaginal Drug Products

A. Introduction

The Panel was unable to find standard acceptable definitions of a "vaginal douche" and of a "vaginal suppository." It also had difficulty in attempting to define the actions of specific ingredients present in vaginal drug products. Therefore, in order to aid in the categorization of the ingredients under its review, the Panel developed the following definitions which are stated in terms of the actions of the ingredients.

B. Definitions of Terms

1. *Vaginal douche.* A vaginal douche is a liquid preparation used to irrigate the vagina over an indeterminate period for one or more of the following purposes: (1) cleansing, (2) producing soothing and refreshing effects, (3) deodorizing, (4) relieving minor irritations, (5) reducing the number of pathogenic microorganisms, (6) altering the pH so as to encourage the growth of normal vaginal flora, (7) producing an astringent effect, (8) lowering surface tension, (9) producing a mucolytic effect, or (10) producing a proteolytic effect.

2. *Vaginal suppository.* A vaginal suppository is a small globular mass, designed for easy introduction into the vagina. It is usually made of two major components—a vehicle and one or more chemical agents. It is solid at room temperature and either liquifies at body temperature or dissolves in vaginal fluids. Vaginal suppositories are designed to be used for one or more of the following purposes: (1) Producing soothing and refreshing effects, (2) deodorizing, (3) relieving minor irritations, (4) reducing the number of pathogenic microorganisms, (5) altering the pH so as to encourage the growth of normal vaginal flora, or (6) producing an astringent effect.

C. General Discussion

1. *Drug vs. cosmetic status.* The Panel reviewed the definitions of "drugs" and "cosmetics" as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)(B) and (i)(1)). With regard to the labeling of vaginal douches, it also reviewed the historical position of FDA in § 369.20 (21 CFR 369.20) which recommends that the label bear a statement, "Warning: Do not use more often than twice weekly unless directed by physician."

The Panel decided that certain labeling claims for vaginal products more properly fall within the cosmetic category, while other claims fit more accurately into the drug category. In this regard, the Panel recognizes that vaginal douches and suppositories may be viewed by a consumer as either cosmetics or drugs.

If the use of a vaginal douche produces only transitory changes in an essentially normal vagina by the removal of secretions and bacteria for example, it is then considered as having only a cleansing effect and thus may be classified as a cosmetic. However, the Panel observed that in the Federal Food, Drug, and Cosmetic Act the term "drug" means "articles intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals" (21 U.S.C. 321(g)(1)(B)). Therefore, the Panel concludes that certain ingredients in vaginal douches and suppositories under its review fall into this category as they prevent, mitigate, or treat disease. For example, ingredients may produce a beneficial effect by removing secretions and changing the vaginal flora either by suppressing or actually eliminating specific pathogens. In this instance, the Panel concludes that these agents are exerting a therapeutic effect and, therefore, are classified as drugs.

This classification as drug or cosmetic is determined by both the type of claim made for the product and the type and strength of ingredients present in the product. If an active ingredient is present in a therapeutic concentration, the product is a drug, even if that prouduct does not claim to produce the effect which will result from the action of the therapeutically effective ingredient.

As the result of its extensive deliberations on this matter, the Panel concludes that the first three parts of its definition of a vaginal douche are cosmetic claims, since the washing of any surface will result in: (1) Cleansing, and may also produce (2) soothing and refreshing, and (3) deodorizing effects. Similarly, the Panel concludes that the first two parts of its definition of a vaginal suppository: (1) Producing soothing and refreshing effects, and (2) deodorizing, are cosmetic claims. Vaginal products which make these claims only are not under the purview of this Panel and do not require testing for effectiveness.

The Panel deliberated at length as to whether the term "deodorant" should be regarded as a drug or cosmetic claim for a vaginal preparation. Taking into consideration the cosmetic product warnings in 21 CFR 740.12 with regard to feminine deodorant sprays, the Panel concludes that a deodorant claim for a vaginal preparation constitutes a cosmetic claim.

In the Panel's opinion, the consumer generally believes that an offensive odor is diminished by a deodorant rather than simply being masked by a pleasant odor. Therefore, the Panel recommends that until a uniform definition of the term "deodorant" is rendered by FDA, and explicit statement describing the mode of action of a deodorant should be included in vaginal product labeling because the consumer is entitled to this information and should be told.

A deodorant may be effective because it: (1) Cleanses the vagina by removing secretions, seminal fluid, and contraceptive products; (2) reduces the number of microorganisms that cause vaginal and vulvar odors; or (3) masks the odors with a pleasant odor. Because currently marketed deodorants do not actually destroy disagreeable body odors but only diminish the perception of these odors, the Panel recommends that the term "destroys odor" not be incorporated into the labeling of deodorant vaginal products because it is not accurate. (See part IV. paragraph B.4. below—Category II labeling.)

The other actions of vaginal drug products ((4) through (10) for vaginal douches and (3) through (6) for vaginal suppositories) must be substantiated by testing if a claim is to be made, as discussed later in this document. (See part IV. paragraph G. below—Testing Guidelines for Effectiveness of Ingredients in Vaginal Drug Products.) Testing guidelines for vaginal suppositories marketed with a contraceptive claim were outlined in the Panel's review of vaginal contraceptive drug products, published in the **Federal Register** of December 12, 1980 (45 FR 82014).

2. *The use of precoital douching to influence the sex of offspring.* A method of influencing the sex of offspring by using acid or basic douches precoitally has been proposed and promoted by Shettles (Refs. 1 and 2), who claims an 80-percent success rate for his method. His basic assumption is that the X-bearing sperm (the female determinant) is larger, stronger (longer-lived), and more resistent to destruction by an acid environment than the smaller, Y-bearing sperm (the male determinant). According to his theory, just before or at the time of ovulation, the cervical mucous is most alkaline and, therefore, prone to favor male offspring; at other times of the cycle, fertilization is more likely to result in female offspring. In order to conceive a child of the desired sex, Shettles suggests that intercourse should be scheduled for those times when cervical mucous is more favorable to either X- or Y-bearing sperm. Shettles also proposes that alkaline or acid douches (soda acid or vinegar) can be used precoitally to alter the pH and facilitate the desired results.

Shettles' claim of 80 percent effectiveness when utilizing the entire method (douching, timing, etc.) has been supported by the work of one investigator who worked with artificial insemination (Ref. 3); others, however, have not been able to duplicate this work (Refs. 4 and 5). In vitro, it does not appear that the rate of X or Y sperm migration is influenced by the pH of the environment (Ref. 6). Much of the work in sex preselection using various methods, including douches, was reviewed by Glass (Ref. 7), and his conclusion was that it "would not be accurate to tell prospective parents that they can choose the sex of their child" using these methods. On the other hand, there are no reports of detrimental effects from using these methods other than the disappointment in failing to achieve the desired results; thus it does not appear necessary to warn against their use.

3. *Labeling guidelines for vaginal douches.* The Panel reviewed the history of douching as both a therapeutic and an elective procedure. There are no data to demonstrate clearly that routine douching is necessary for the normal, healthy woman. On the other hand, there would appear to be no medical contraindication to douching for the normal, healthy, nonpregnant woman who believes that she derives some benefit from this practice.

a. *Method of douching.* In order to develop guidelines and recommendations for the proper labeling of ingredients, the Panel believes that it is necessary to consider simultaneously the safety and the effectiveness of the method by which ingredients are delivered. Vaginal douching requires such consideration because:

(1) Its primary purpose is the irrigation of a body cavity (the vagina) lined by an absorptive mucosa which is, in itself, susceptible to chemical, mechanical, and thermal injury.

(2) The vagina is in direct continuity with the internal organs of reproduction (i.e., the uterus and fallopian tubes) and the abdominal cavity. In addition, it has a commonly derived and interrelated blood supply and lymphatic drainage with these organs.

(3) Improper douching practices and improper care of equipment may lead to pathogenic microorganisms being introduced into the vagina and upper reproductive tract.

As previously stated, the Panel concludes that there is no proven therapeutic usefulness for routine douching by the normal, healthy woman; however, the Panel is concerned with the methods of nontherapeutic douching insofar as safety to the consumer is concerned. The Panel disagrees with the practice, as recommended in several package inserts which it reviewed, of occluding the vaginal opening until the woman notes a sensation of fullness in the vagina or the lower abdomen, supposedly indicating distentation of the vagina with the fluid. Several reports in the literature suggest the possibility that douche fluid may be carried through the uterus and fallopian tubes and cause chemical pelvic peritonitis (Refs. 8 through 11). In one of these reports, the apparent relationship of peritonitis to occlusive or pressure douching is detailed in five cases (Ref. 10).

Although a causal relationship between the practice of vaginal occlusion during douching and peritonitis is not completely established by these reports, the Panel believes that common sense dictates that the use of high intravaginal hydrostatic pressure is potentially dangerous and that the warning based upon a "feeling of fullness" is too vague and variable to be of significant value in preventing injury. The Panel recommends that any reference to occlusion of the vaginal opening during douching be removed from all labeling, and that this practice be discouraged except at the direction of a physician.

b. *Contraindications.* There are no data available relative to the safety of douching during pregnancy. From a study of 1,600 women, of whom 510 were pregnant, approximately 12 percent of the pregnant women douched; Stock, Stock, and Hutto (Ref. 12) concluded that, in the absence of complications of pregnancy, such a practice would seem to be harmless. On the other hand, several reports detail case studies of fatal air embolism in pregnancy following vaginal insufflation with chemical powder (Refs. 13 through 16) and with air blown into the vagina during oral-genital sex play (Ref. 17).

In one article reviewed by the Panel, the author noted: "Pregnant women should never douche. Especially dangerous is the use of a syringe. Air may be forced into the uterine blood vessels with consequent fatal air embolism. Embolism with soap or disinfectant solutions may lead to intravascular hemolysis, also with fatal consequences" (Ref. 18). Several of the Panel members reported clinical experiences with the latter type of case in self-induced abortions, as well as the transtubal passage of douche solutions

used for the same purpose. The increased vascularity of the uterus in pregnancy, the volume of the uteroplacental blood flow, and the large surface area of the vascular placental site all combine to place the pregnant woman at increased risk for these vascular accidents.

In addition, potential complications include the initiation of bleeding due to the detachment of placental implantation, rupture of the chorioamniotic membrance, introduction of intrauterine infection, and adverse effects of chemicals, either direct or absorbed, on the developing fetus.

The Panel concludes that the real and potential dangers associated with routine douching during pregnancy outweigh any possible benefits. The Panel, therefore, recommends that labeled instructions include an admonition against douching during pregnancy except on the advice and instruction of a physician.

Additionally, the Panel believes that there is a misconception among the public that douching is effective as a means of preventing pregnancy. All available data, however, suggest that douching is ineffective for this use (Ref. 19); and the Panel, therefore, believes that this should be prominently stated in all labeling.

c. *Limitations*—(1) *Frequency.* The Panel examined at length the issue of the frequency of nontherapeutic douching as stated in the labeling instructions given to the consumer. Instructions on all current labels caution against douching more than twice weekly except on the advice of a physician. Review of the scientific literature has failed to reveal data to support this labeling restriction. In fact, several studies report only transient effects, if any, of douching on the vaginal pH, and no adverse effects of daily douching on the vaginal mucosa (Refs. 20, 21, and 22).

There is no proof that the frequency of douching plays a role in adversely modifying the vagina flora, encouraging the development of chemical vaginitis, or producing injury due to resultant excessive dryness in most women. However, it must be noted that these effects have been observed, indicating that adverse effects will vary from one woman to another and from one solution to another. Therefore, the Panel recommends that no restriction be placed on the frequency of using OTC vaginal douches.

(2) *Adverse reactions.* Some individuals may experience adverse reactions to one or more of the ingredients present in a douche. Sensitivity may be signaled by the development of vaginal itching, redness, swelling, or pain in the vagina after douching. The onset of abdominal or vaginal pain while douching may be indicative of improper use of the douche, excessively high temperature of the fluid, or the presence of a serious disorder within the pelvic region.

The consumer should be warned of the potential for these adverse reactions and cautioned to discontinue douching and consult a physician if symptoms persist.

(3) *Minor vaginal irritation.* Although the Panel is unaware of any serious consequences which may result from prolonged douching, it believes that a specific time limitation of 1 week should be placed on the self-treatment of minor vaginal irritation or itching. If significant improvement has not occurred by that time the patient should consult a physician.

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IV. Categorization of Vaginal Drug Products

The following chart is included to assist the reader in quickly identifying each active ingredient claim and the category to which the Panel assigned the ingredient for that claim.

CATEGORIZATION OF ACTIVE INGREDIENTS

Active ingredients	Relief of minor irritation	Alters pH	Astringent	Lower surface tension and mucolytic
Acetic acid		III		III
Alkyl aryl sulfonate				
Allantoin	III			
Aloe vera, stabilized	III			
Alum			III	
Benzalkonium chloride	III			
Benzethonium chloride	III			
Benzocaine	III			
Boric acid	III	III	III	III
Boroglycerin	III	III	III	III
Calcium and sodium propionate	I			
Citric acid		III		
Dioctyl sodium sulfosuccinate				I
Edetate disodium	III			
Edetate sodium	III			
Hexachlorophene	II			

CATEGORIZATION OF ACTIVE INGREDIENTS—Continued

Active ingredients	Relief of minor irritation	Alters pH	Astringent	Lower surface tension and mucolytic
Latic acid		III		
Nonoxynol 9	III			I.
Octoxynol 9	III			I.
Oxyquinoline citrate	III			
Oxyquinoline sulfate	III			
Papain				III.
Phenol	II			
Phenolate sodium	II			
Potassium sorbate	I			
Povidone-iodine	I			
Sodium bicarbonate		III		III.
Sodium borate	III	III	III	III.
Sodium carbonate		III		
Sodium lactate		III		
Sodium lauryk sulfate				I.
Sodium perborate	III	III	III	III.
Sodium salicylate	II			
Sodium salicylic acid phenolate	II			
Tartaric acid		III		
Zinic sulfate			III	

A. Category I Conditions

The following are Category I conditions under which vaginal drug products are generally recognized as safe and effective and not misbranded:

1. *Category I active ingredients*—a. *Ingredients for the relief of minor irritations of the vagina.*

Propionate (calcium or sodium salts)
Potassium sorbate
Providone-iodine

(1) *Propionate (calcium or sodium salts).* The Panel concludes that the propionates in concentrations up to 20 percent are safe and effective for OTC use in vaginal drug products which claim to relieve minor irritations of the vagina.

(i) *Safety.* Propionates are used extensively in the baking and dairy industry for mold retardation. Veterinarians use them for treating wound infection, otitis, conjunctivitis, and vaginitis; and they are used topically in humans to control otomycosis and epidermophytosis in a 0.5- to 10-percent concentration range (Ref. 1). The safety of these compounds is well established in the literature. Their acute toxicity is so low that it does not seem necessary or practical to determine the LD_{50} (Ref. 2). One investigator reported that 20 percent solutions caused no harmful effect in rabbit eyes (Ref. 3). A 10-percent solution, with a pH of 7.2, applied to the conjuntiva and nasal mucosa of human subjects caused only slight, temporary stinging; when applied to the intact skin of human subjects, 20 percent solutions, with pH values ranging from 7 to 8.5, produced no appreciable irritation (Ref. 3). The Panel, therefore, concludes that the propionates are safe for OTC use at concentrations up to 20 percent.

(ii) *Effectiveness.* The propionates are fungiostatic and bacteriostatic against a number of gram-positive cocci. Substantial clinical data have been submitted on a product containing the propionates that has been marketed for 30 years as a prescription item. These data show an 80-percent remission of itching and ultimate cure in nonpregnant women with mycotic vaginitis (Ref. 2). Even though these studies are 30 years old, enough data were presented to prove to the Panel that these ingredients would be of benefit to women with minor irritations of the vagina and that they are appropriate for OTC use within the labeling guidelines established below. (See Part IV. paragraph A.2.c.(1) below—Ingredients for the relief of minor irritations of the vagina.) Therefore, the Panel concludes that the propionates are effective ingredients for OTC use in the relief of minor irritations of the vagina. The only formulation reviewed by the Panel was a vaginal gel (Ref. 2).

(iii) *Dosage and directions.* The Panel recommends that propionates be used in vagina doses of up to 2.3 grams (g) in concentrations of up to 20 percent in a vaginal gel twice daily.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) below—Ingredients for the relief of minor irritations of the vagina.)

(v) *Professional labeling.* The Panel is aware that the propionates are safe and effective for the physician-supervised treatment of *Candida albicans.* Therefore, the following professional labeling claim may be made for its use. "For the treatment of *Candida albicans.*" The Panel emphasizes that this is not an OTC labeling claim and should not appear on any consumer labeling which accompanies a vaginal drug product containing the propionates. Professional labeling for vaginal drug products in general is discussed elsewhere in this document. (See part IV. paragraph A.2.d. below—Professional labeling.)

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(2) *Potassium sorbate.* The panel conculdes that potassium sorbate in a concentration of 1 to 3 percent is safe and effective for OTC use as a vaginal douche for the relief of minor irritations of the vagina.

(i) *Safety.* The sorbates have been safely used as mold inhibitors in food for 20 years (Ref. 1) The Panel reviewed many animal and human toxicity tests using potassium sorbate (Refs. 2 and 3) and determined that the vaginal use of this ingredient does not pose any safety problem. The oral LD_{50} for potassium sorbate in rats has been found to be 7,360 milligrams per kilogram (mg/kg) of body weight.

In addition to the fact that this compound is nontoxic when ingested orally and applied vaginally, the Panel noted that in two studies of 132 and 122 women who used potassium sorbate for yeast vaginitis (*Candida albicans*), no incidence of allergic reaction or mucosal irritation was reported with the use of 1 and 5 percent solutions (Refs. 2 and 3). Burning sensations did result from the use of a 10-percent solution of potassium sorbate. The Panel concludes that potassium sorbate is safe for OTC use.

(ii) *Effectiveness.* The Panel reviewed clinical data which support the use of potassium sorbate in vaginal douches for the treatment of minor vaginal irritations. In one study of 132 women with longstanding yeast infections, the vagina was wiped clean and painted with a 1-percent solution of potassium sorbate in water or a 1-percent douche solution was used. in many of these cases, symptoms of irritation subsided after an initial treatment, and symptoms of irritation were still absent several months afterward. Objectively, cytologic smears (agar cultures) demonstrated diminished yeast growth after treatment with potassium sorbate (Ref. 2).

In a second study of 122 women (61 having yeast vaginitis alone, 51 having a mixture of yeast vaginitis plus *Trichomonas vaginalis.* and 10 having

Trichomonas vaginalis alone), the use of both 1-percent and 3-percent solutions (saturated cotton tampons) of potassium sorbate resulted in the gradual disappearance of symptoms in an average of 10 days for the 1-percent solution and an average of 7 days for the 3-percent solution. Objective signs of yeast infection gradually disappeared in an average of 14 days for the 1-percent solution and average of 7 days for the 3-percent solution. The investigators indicated that the use of a 3-percent solution resulted in fewer recurrences after therapy was discontinued (Ref. 3). The Panel concludes that potassium sorbate is effective for OTC use in the relief of minor irritations of the vagina.

(iii) *Dosage and directions.* The Panel recommends that potassium sorbate be used as a vaginal douche in a concentration of 1 to 3 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) below—Ingredients for the relief or minor irritations of the vagina.) The Panel also recommends Categhory I labeling for vaginal douches. (See part IV. Paragraph A.2.a. below—Package inserts for vaginal douches, and part IV. Paragraph A.2.b. below—Principal display panel.)

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(3) McKinnon, D. A., and E. B. Rodgerson, "Use of Potassium Sorbate for Treatment of Fungal Infections," *Obstetrics and Gynecology*, 45:108-110, 1975.

(3) *Providone-iodine.* The Panel concludes that providone-iodine in a concentration of 0.15 to 0.3 percent is safe and effective for OTC use as a vaginal douche for the relief of minor irritations of the Vagina.

(i) *Safety.* Acute and chronic toxicity studies of providone-iodine in animals and humans have shown little local or general toxicity and few sensitizations. In experimental animals, dilute solutions cause little or no irritation or sensitivity reaction when applied to open wounds, oral mucosa, vaginal mucosa, and the eye (Refs. 1 through 5). In its review, the Panel found ample evidence from clinical studies in humans attesting to the absence of significant local or general toxicity when providone-iodine, both in undiluted form and as a dilute douche, was used to cleanse and disinfect skin and mucous membranes (Refs. 2 and 6 through 16).

Providone-iodine is absorbed from mucous membranes and causes a transient rise in the serum protein-bound iodine level, athough proof of this is not constant in all studies. This elevation returns to normal in 7 to 30 days, and there is no evidence that this has clinical significance with respect to thyroid function (Refs. 9 through 12 and 16).

Two reports were reviewed which demonstrate that providone-iodine is capable of modifying the deoxyribonucleic acid of both bacterial and human diploid cells in vitro (Refs. 17 and 18). In certain cases, chemical modification of deoxyribonucleic acid has been shown to result in mutagenic alteration which, in turn, has been related to carcinogenic potential in animals (Ref. 19). Criticism of these studies (Refs. 20 and 21) emphasized that the altered environment conditions required for expression of the mutagenic potential in the bacterial system study, and the deoxyribonucleic stand-breakage in cultured human diploid cells treated with povidone-iodine may not be evidence of mutation, but rather a cytotoxic effect.

The Panel also reviewed the results of additional cytogenic toxicity and mutagenic studies (Refs. 20, 21, and 22). These studies included: micronucleus test, chromosome examination using bone marrow cells from Chinese hamsters, dominant lethal test, a mouse lymphoma assay, and a mammalian cell transformation assay. The test results were all negative for the mutational or clastogenic effect of providone-iodine.

In addition, the Panel reviewed a providone-iodine migration and absorption study in three experimental animal species using radioactively tagged providone-iodine (Ref. 20). Although there was evidence of absorption of iodine from the vagina into the systemic circulation, these experiments showed little or no flow of radioactively tagged providone-iodine into the uterus from the vagina. The Panel believes that the weight of the evidence is sufficient to conclude that povidone-iodine does not have a significant mutagenic or carcinogenic effect.

The Panel concludes that providone-iodine is safe when used as an OTC vaginal douche for the relief of minor vaginal irritations.

(ii) *Effectiveness.* Microbiocidal effectiveness of providone-iodine has been clearly demonstrated by in vitro studies against a variety of pathogenic bacteria, fungi, and protozoan organisms. Spermicidal and antiviral activity has also been demonstrated (Refs. 23, 24, and 25). In clinical studies, povidone-iodine has been shown to disinfect skin and mucous membrane, and to be effective as a cleansing douche (Refs. 13 and 26 through 30). The Panel concludes that povidone-iodine is effective when used as an OTC vaginal douche for the relief of minor vaginal irritations.

(iii) *Dosage and directions.* The Panel recommends that providone-iodine be used as a vaginal douche in a concentration of 0.15 to 0.3 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) below—Ingredients for the relief of minor irritations of the vagina.)

(v) *Professional labeling.* The following claims are supported by the submitted evidence and may be used only in professional labeling.

(*a*) The claim of "microbiocidal douche" is well supported by both in vitro and in vivo studies (Refs. 1, 2, 23, 24, 25, and 30).

(*b*) The claim of "clinically effective in vaginal moniliasis, T-vaginales vaginitis, and nonspecific vaginitis" is adequately supported by the data presented. However, because the treatment regimen includes the use of the dilute douche combined with application of the full-strength solutions to the vaginal mucosa, it is recommended that the labeling be changed to include the words "clinically effective in a program of treatment for . . . ."

(*c*) The professional labeling should also detail the therapeutic regimen used in the studies which resulted in clinical effectiveness so that the physician may appropriately advise the patient.

(*d*) While not affecting its safety, the possible effect of providone-iodine on serum protein-bound iodine should be made a part of labeling as a matter of information to the physician. The following wording is recommended: "The use of providone-iodine as a douche may cause a transient rise of serum protein-bound iodine."

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b. *Ingredients which lower surface tension and which produce a mucolytic or proteolytic effect.*

Anionic surface active agents (dioctyl sodium sulfosuccinate or sodium lauryl sulfate)

Nonionic surface active agents (nonoxynol 9 or octoxynol 9)

(1) *Anionic surface active agents (dioctyl sodium sulfosuccinate or sodium lauryl sulfate).* The Panel concludes that the anionic surface active agents dioctyl sodium sulfosuccinate and sodium lauryl sulfate in a concentration of 0.002 and 0.02 percent are safe and effective for OTC use as a vaginal douche to produce a mucolytic effect.

(i) *Safety.* Long-term toxicity studies in which animals (principally rats) were given these ingredients orally and intraperitoneally revealed that the toxic and lethal concentrations are extremely high when compared to the concentrations normally used in vaginal douche products (Refs. 1, 2, and 3). Human safety data show high oral tolerance (Ref. 4). Tests of local application of solutions of 1 percent or greater to mucous membranes have demonstrated irritation (Refs. 5 and 6), but this is a significantly greater concentration than the final concentration (0.00235 percent) generally used in vaginal douche products.

In a 25-percent concentration, sodium lauryl sulfate serves as a tumor "promoter" on mouse skin. However, this activity rapidly diminishes with reduced concentrations, and the ingredient has been shown to have no such activity at a 2-percent or lower concentration (Ref. 7). The Panel concludes that the testing proved that the ingredients are safe at concentrations of 0.2 percent or less.

(ii) *Effectiveness.* The anionic surface active agents are generally recognized as wetting, solubilizing, and mucolytic agents and are widely used as such by the pharmaceutical industry (Ref. 8).

The Panel is aware of an in vitro test which showed that sodium lauryl sulfate was active in lysing trichomonads and bacteria (Ref. 9). (This can be extrapolated to pertain also to dioctyl sodium sulfosuccinate.) This same study gave evidence of the in vivo mucolytic effect of the ingredient in a douche. The Panel, therefore, concludes that these two ingredients are recognized as mucolytic agents.

(iii) *Dosage and directions—(a) For products containing dioctyl sodium sulfosuccinate.* The Panel recommends that dioctyl sodium sulfosuccinate be used as a vaginal douche in a concentration of 0.002 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(*b*) *For products containing sodium lauryl sulfate.* The Panel recommends that sodium lauryl sulfate be used as a vaginal douche in a concentration of 0.01 to 0.02 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which lower surface tension and produce a mucolytic effect. (See part IV. paragraph A.2.c.(4) below—Ingredients which lower surface tension and produce a mucolytic effect.) The Panel also recommends Category I labeling for vaginal douche products. (See part IV. paragraph A.2.a. below—Package inserts for vaginal douches, and part IV. paragraph A.2.b. below—Principal display panel.) In addition, the Panel recommends that the following warning be required for these two ingredients when they are in concentrated forms which require mixing: "Avoid prolonged contact with the skin and avoid contact with the eyes."

(v) *Professional labeling.* The Panel concludes that sodium lauryl sulfate and

dioctyl sodium sulfosuccinate are safe and effective for the physician-supervised treatment of *Trichomonas vaginalis* (Ref. 9). Therefore, the following professional labeling claim may be made for their use. "For the treatment of *Trichomonas vaginalis*." The Panel emphasizes that this is not an OTC labeling claim and should not appear on any consumer labeling which accompanies a vaginal douche product containing sodium lauryl sulfate or dioctyl sodium sulfosuccinate. Professional labeling for vaginal drug products in general is discussed elsewhere in this document. (See part IV. paragraph A.2.d. below—Professional labeling.)

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(2) *Nonionic surface active agents (nonoxynol 9 or octoxynol 9).* The Panel concludes that the nonionic surface active agents nonoxynol 9 and octoxynol 9 in concentrations of 0.0176 and 0.088 percent, respectively, are safe and effective for OTC use as a vaginal douche to produce a mucolytic effect.

(i) *Safety.* Nonoxynol 9 and octoxynol 9 are widely used in pharmaceutical preparations as nonionic surfactants. They have significant advantages over ionic surfactants with respect to stability and compatibility (Ref. 1). The Panel reviewed numerous animal eye and skin irritation studies which used concentrations of up to 25 percent and which showed slight to moderate irritation (Refs. 2 through 10). However, even at 100 percent concentration, these ingredients rarely sensitize or irritate human skin or mucous membranes. Manifestation of symptoms in animals dosed orally is related to gastrointestinal irritation, i.e., diarrhea and bloating, with little, if any, intestinal absorption or decomposition (Ref. 11).

The safety of these two ingredients was discussed in more detail in that portion of the Panel's review which dealt with OTC vaginal contraceptives, published in the **Federal Register** of December 12, 1980 (45 FR 82028–82030).

(ii) *Effectiveness.* The nonionic surface active agents are generally recognized as wetting, solubilizing, and mucolytic agents, widely used as such by the pharmaceutical industry. Since they act as detergents, the Panel has determinded that these two ingredients are to be considered effective mucolytic agents. The only dosage form containing these ingredients that the Panel reviewed was a vaginal douche (Refs. 8 and 10).

(iii) *Dosage and directions—(a) For products containing nonoxynol 9.* The Panel recommends that nonoxynol 9 be used as a vaginal douche in a concentration of 0.0176 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(b) For products containing octoxynol 9. The Panel recommends that octoxynol 9 be used as a vaginal douche in a concentration of 0.088 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which lower surface tension and produce a mucolytic effect. (See part IV. paragraph A.2.c.(4) below—ingredients which lower surface tension and produce a mucolytic effect.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. below—Package inserts for vaginal douches, and part IV. paragraph A.2.b. below—Principal display panel.)

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2. *Category I labeling.* The following specific labeling requirements are furnished to elaborate on the general labeling guidelines discussed elsewhere in this document. (See part II. paragraph F. above—Labeling.)

a. *Package inserts for vaginal douches.* The Panel has reviewed all of the currently used package inserts which provide the consumer general instructions for douching. The Panel concludes that the required information should be included in a package insert or other appropriate labeling. This information should be presented in language which can be easily read, easily understood, and readily retained by the consumer. At a minimum, this information should incorporate warnings and directions for douching.

Package inserts for use in professional labeling, e.g., in the treatment of vaginitis, should be separately prepared since the instructions for recommended method, frequency, and duration of treatment will differ significantly from those included with products intended solely for OTC use.

(1) *Recommended methods for douching.* The Panel reviewed the methods of douching as submitted by manufacturers of the various products. It observed that the instructions given to the consumer as to the use of these products and the required equipment ranged from none to explicit diagramed instruction sheets.

The Panel recommends that the following directions be included with douche products:

(i) All solutions requiring preparation should be thoroughly mixed according to the manufacturer's directions immediately prior to use. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(ii) Three body positions are presented in the instruction materials given to the consumer: Sitting, standing, and reclining. The reclining position is recommended as the most effective; however, either of the other two positions is usually adequate.

(iii) Suspend the bag no more than 3 feet above the vagina. After the bag is filled and suspended, release the clamp so that the solution will expel any air out of the tubing before placing the nozzle into the vagina.

(iv) Insert the nozzle into the vagina, then release the clamp to permit the solution to flow gently into the vagina.

(v) Do not press the lips of the vagina around the nozzle. Allow free outflow of the solution.

(vi) All equipment, especially the tubing, should be thoroughly rinsed and allowed to brain before storage.

(vii) To use the bulb syringe, fill the bulb completely with solution, being careful to expel any air. Insert the nozzle gently into the vagina and exert only enough pressure to cause the solution to flow gently into the vagina.

(viii) To use prepackaged disposable units, insert the nozzle gently into the vagina and exert only enough pressure to cause the solution to flow gently into the vagina.

(2) *Warnings* —(i) "Do not use during pregnancy except upon the advice and under the supervison of a physician."

(ii) "Do not press the lips of the vagina around the nozzle. Overfilling the vagina may force fluid into the uterus (womb) and cause inflammation."

(iii) "Douching does not prevent pregnancy."

(iv) "If douching results in pain, soreness, itching, excessive dryness, or irritation, stop douching. If symptoms dersist, consult a physician."

(v) "Keep this and all drugs out of the reach of children."

(vi) When a douche contains an ingredient which is Category I for the treatment of minor vaginal irritation, the following warning must be included: "If minor irritation has not improved after 1 week of use, consult your physician."

b. *Principal display panel.* In addition to the promotional material for a product, the principal display panel of all vaginal douche products should contain certain information which the Panel believes to be important for the correct use of the product by the consumer.

(1) The Panel reviewed the principal display panels of submitted products and has found that vaginal douches are frequently not identified as such. It, therefore, recommends that the term "vaginal douche," "vaginal douche concentrate," "vaginal gel," or "vaginal suppository," appear on the principal display panel.

(2) In view of the commonly held misconception about the effectiveness of vaginal douches for the prevention of pregnancy, the Panel recommends that the principal display panel contain the following wording in a prominent position: "Does Not Prevent Pregnancy." This wording should appear on the label of the immediate outer container and all associated labeling. This statement is necessary in order to inform the consumer at the time of purchase, during conditions of ordinary use, and to correct misconceptions.

(3) The attractiveness and colorful appearance of many products may encourage children to open and consume the contents. Therefore, bottle containers should have a child-resistant cap, and the principal display panel and associated labeling should contain the phrase "Keep this and all drugs out of the reach of children", and display a poison control symbol as dictated by specific ingredients contained in the product.

c. *Indications and warnings.* The Panel recommends the following Category I labeling (indications and warnings) for vaginal drug products (ingredients) to be generally recognized as safe and effective and not misbranded, as well as specific labeling set forth under specific ingredient evaluations.

(1) *Ingredients for the relief of minor irritations of the vagina.*

(i) *Indications*—(*a*) "For relief of minor vaginal irritation and itching."

(*b*) "For temporary relief of minor vaginal irritation and itching."

(*c*) "For relief of minor vaginal soreness."

(ii) *Warnings*—(*a*) "Keep this and all drugs out of the reach of children."

(*b*) "Does Not Prevent Pregnancy."

(*c*) "Do not use during pregnancy except upon the advice and under the supervison of your physician."

(*d*) "If symptoms continue or redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(*e*) "If minor irritation has not improved after 1 week of use, consult your physician."

(2) *Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora*—(i) *Indications.* "Helps keep vagina in its normal acid state."

(ii) *Warnings*—(*a*) "Keep this and all drugs out of the reach of children."

(*b*) "Does Not Prevent Pregnancy."

(*c*) "Do not use during pregnancy except upon the advice and under the supervison of your physician."

(*d*) "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(3) *Ingredients which produce an astringent effect*—(i) *Indications.* "Astringent."

(ii) *Warnings*—(*a*) "Keep this and all drugs out of the reach of children."

(*b*) "Does Not Prevent Pregnancy."

(*c*) "Do not use during pregnancy except upon the advice and under the supervison of your physician."

(*d*) "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(4) *Ingredients which lower surface tension and which produce a mucolytic effect*—(i) *Indications.*

(*a*) "Removes vaginal discharge."

(*b*) "Removes vaginal secretions."

(*c*) "Mild detergent action."

(*d*) "Thins out vaginal mucus, discharge."

(ii) *Warnings*—(*a*) "Keep this and all drugs out of the reach of children."

(*b*) "Does Not Prevent Pregnancy."

(*c*) "Do not use during pregnancy except upon the advice and under the supervison of your physician."

(*d*) "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

d. *Professional labeling.* Some of the submissions provided to the Panel contain information indicating that the ingredients are intended for the treatment of specific disease conditions such as trichomoniasis or moniliasis. Separate professional labeling should be supplied to the physician for ingredients which have been proven to be safe and effective in the treatment of specific disease conditions.

Professional labeling should include, as a minimum, the following information:

(1) *Indication for use.* The specific disease states for which the ingredient has been proven to be effective.

(2) *Usual dosage, frequency, and duration of treatment.* The specific treatment regimen which has been shown to be effective in the treatment of the particular disease state.

(3) *Method of douching.* The specific directions for therapeutic douching as detailed in the above treatment regimen. (See part IV. paragraph A.2.a.(1) above—Recommended methods for douching).

(4) *Warnings.* Information to alert the physician to the contraindications and the possible adverse reactions to the use of the ingredient or product. Contraindications should include a history of sensitivity or adverse reaction to any of the ingredients or the product. Potential adverse reactions include the onset of pain, swelling, irritation, bleeding, or aggravation of symptoms.

B. Category II Conditions

The following are Category II conditions under which vaginal drug products are not generally recognized as safe and effective or are misbranded.

1. *Category II active ingredients.*

Hexachlorophene
Phenol (in concentrations greater than 1.5 percent)
Phenolate sodium (in concentrations greater than 1.5 percent phenol)
Sodium salicylic acid phenolate (in concentrations greater than 1.5 percent phenol)
Sodium salicylate

a. *Hexachlorophene.* Although there are insufficient data available concerning the antimicrobial effectiveness of hexachlorophene in vaginal douches, the Panel concludes that concentrations high enough to be effective for the relief of symptoms of minor vaginal irritation (greater than 0.75 percent) would not be safe for OTC use based on the reported toxicity of hexachlorophene. Therefore, the Panel classifies hexachlorophene as a Category II ingredient.

(1) *Safety.* Hexachlorophene has been widely used in the past as an antibacterial agent, particularly in nurseries for the newborn (Ref. 1). The central nervous system toxicity of hexachlorophene is well documented and has been reviewed by Lockhart (Ref. 2). The LD_{50} of hexachlorophene in the dog is 140 mg/kg, 150 to 200 mg/kg in the mouse, and 250 mg/kg in the guinea pig (Ref. 1). In experimental animals and in man, it has been shown that blood levels of approximately 1 microgram per milliliter (ug/mL) result in neuropathology, and higher levels result in fatality (Ref. 2).

Hexachlorophene has been shown to be absorbed through the skin (Ref. 3) and after oral administration (Ref. 2). Therefore, it is reasonable to assume that it can be absorbed through the vaginal mucosa. More recently, there has been evidence which links the use of hexachlorophene (0.5 percent) with fetal damage in nurses who were pregnant at the time they used it as a surgical scrub (Ref. 4 and 5). Based on safety concerns similar to those set forth here, FDA proposed in the **Federal Register** of January 7, 1972 (37 FR 219) to restrict the use of hexachlorophene in OTC drug formulations to "a level no higher than necessary to achieve the intended preservative function and in no event higher than 0.1 percent." In response to comments generated by the proposal, FDA concluded: ". . . based upon current benefit to risk ratio, that hexachlorophene is not necessary as a preservative in any drug and/or cosmetic products, which in normal use may be applied to mucous membranes or which are intended to be used on mucous membranes" (37 FR 23537). This prohibition for OTC use has been codified in 21 CFR 250.250(d). Because all vaginal products are intended to be used on mucous membranes they are covered by this regulation.

(2) *Effectiveness.* The Panel found no evidence to indicate that hexachlorophene in the concentration present in submitted products is effective against vaginal bacteria. In addition, no evidence was submitted to prove that this ingredient is effective in relieving the symptoms of minor irritations of the vagina.

(3) *Evaluation.* The Panel concludes that hexachlorophene should be excluded from all vaginal products based on the compound's potential to produce central nervous system toxicity in the conceptus or fetus. The Panel is unaware of new evidence that would establish the safety of the use of hexachlorophene in vaginal products and, therefore, sees no reason to recommend a change to existing FDA regulations.

References

(1) Gluck, L., "A Perspective on Hexachlorophene," *Pediatrics*, 51:400–406 1973.

(2) Lockhart, J. D., "How Toxic is Hexachlorophene?," *Pediatrics*, 50:229–235, 1972.

(3) Kopelman, A. E., "Cutaneous Absorption of Hexachlorophene in Low-Birth-Weight Infants," *Journal of Pediatrics*, 82:972–975, 1973.

(4) Check, W., "New Study Shows Hexachlorophene is Teratogenic in Humans," *Journal of the American Medical Association*, 240:513–514, 1978.

(5) "Hexachlorophene—Interim Caution Regarding Use in Pregnancy," *FDA Drug Bulletin*, August-September, 1978.

b. *Phenol, phenolate sodium, or sodium salicylic acid phenolate.* On the basis of the available data, the Panel concludes that preparations containing phenol in concentrations greater than 1.5 percent are unsafe for use in OTC vaginal products. In its review, the Panel considered phenol and phenolate sodium to exist in an equilibrium once they are in solution together. The Panel concludes that in this equilibrium, the total available phenol is more accurately represented by the sum of the concentrations of the phenol and phenolate ion, and is not dependent on the original proportions of the two substances.

(1) *Safety.* Phenol is a toxic chemical which is rapidly absorbed through normal skin and even more rapidly through abraded skin. There is little doubt that rapid absorption into the blood stream would occur after application to the vaginal mucosa (Refs. 1, 2, and 3). As little as 1.5 g ingested orally can cause nausea, vomiting, circulatory collapse, central nervous system disturbances, coma, necrosis of the mouth and gastrointestinal tract, and cardiac failure (Ref. 1). Phenol has also been shown to be absorbed and cause toxic reactions when incorporated into ointments at concentrations as low as 2 percent (Ref. 3).

Because of the well-known toxic effects of phenol in humans, the highly absorptive characteristics of the vaginal mucosa, and the large blood supply to the vagina which affords rapid uptake and distribution of absorbed substances, the Panel concludes that phenol is unsafe for vaginal use in concentrations greater than 1.5 percent.

(2) *Effectiveness.* Phenol is a mildly effective topical antibacterial agent, and a concentration of at least 1 percent is needed to exhibit bactericidal activity (Ref. 1). It is widely used as an ingredient in mouthwashes and anesthetic lozenges for the oral cavity and is also found in some rectal preparations. Many papers have been submitted to the Panel on the safety of the lower doses of phenol (1.4 percent) in the human oral cavity and in animal studies (Ref. 3), but the one study available in the literature on the effectiveness of phenol as an ingredient of vaginal products was poorly controlled (Ref. 4). Therefore, the Panel concludes that insufficient data are available to determine the effectiveness of phenol in concentrations greater than 1.5 percent.

(3) *Evaluation.* The Panel concludes that, due to its toxic character, phenol in concentrations greater than 1.5 percent should be removed from all vaginal drug products. This includes any compound, complex, or other formulation, e.g., phenolate, sodium and sodium salicylic acid phenolate which contains or delivers to the pharmacological site of action any phenol in concentrations greater than 1.5 percent.

This ingredient has also been reviewed by the Advisory Review Panel on OTC Topical Antimicrobial Drug Products in the **Federal Register** of September 13, 1974 (39 FR 33103), and the conclusions of that Panel were the same.

References

(1) Harvey, S. C., "Antiseptics and Disinfectants," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 990–991, 1975.

(2) Deichmann, W. B., "Local and Systemic Effects Following Skin Contact with Phenol. A Review of the Literature," *Journal of Industrial Hygiene and Toxicology*, 31:146–154, 1949.
(3) OTC Volume 110031.
(4) Smith, C. E., and J. F. J. Clark, "Gynaseptic in the Treatment of Vaginitis," *Journal of the National Medical Association*, 55:317–319, 1963.

c. *Sodium salicylate.* The Panel concludes that sodium salicylate, which is generally recognized as an antipyretic, analgesic, and keratolytic agent (Regs. 1 and 2), is ineffective as an ingredient in vaginal products.

(1) *Safety.* No data were submitted to the Panel, nor is the Panel aware of any data which prove that sodium salicylate is safe when used intravaginally. The Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Drug Products found this ingredient to be safe as an internal analgesic in doses of 325 to 650 mg every 4 hours. The Panel's review was published in the **Federal Register** of July 8, 1977 (42 Fr 35420). However, its findings can by no means be extrapolated to topical application to the vaginal mucosa.

(2) *Effectiveness.* This substance is included in a product with phenol and sodium hydroxide. The manufacturer calls this complex sodium salicylic acid phenolate, but the Panel doubts the existence of this complex. No data were submitted to the Panel which prove that sodium salicylate has any beneficial effect which would make it appropriate for inclusion in an OTC vaginal drug product.

(3) *Evaluation.* The Panel concludes that there are no data to support the use of sodium salicylate in vaginal drug products and, therefore, recommends that it be removed from all such products.

References

(1) "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 1120, 1976.
(2) Woodbury, D. M., and e. fingl, "Analgesic-Antipyretics, Anti-Inflammatory Agents, and Drugs Employed in the Therapy of Gout," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, pp. 326–339, 1975.

2. *Category II combination vaginal drug products.* The following combinations reviewed by the Panel contain at least one Category II ingredient. This factor has led the Panel to conclude that these combinations are unsafe or ineffective for any OTC vaginal use. Therefore, the Panel has placed the following combinations in Category II.

(1) Hexachlorophene, boric acid, zinc sulfate, potassium aluminum sulphate, tartaric acid, camphor, phenol, and octoxynol 9.

(2) Phenol (greater than 1.5 percent), sodium borate, and sodium salicylate.

(3) Sodium salicylic acid phenolate (greater than 1.5 percent phenol), boroglycerin (greater than 1 percent boron), benzocaine.

(4) Sodium salicylic acid phenolate (greater than 1.5 percent phenol), boroglycerin (greater than 1 percent boron), benzocaine, and providone-iodine.

The Panel realizes that its recommendation pertains to the drug use of these combination products and not to the cosmetic use. However, the Panel recommends to FDA that any Category II ingredient which causes a combination product to be placed in Category II by virtue of its lack of safety be removed from the product regardless of whether its intended use is as a drug or as a cosmetic, in order to ensure that the consumer is not exposed to ingredients which this Panel has judged to be unsafe.

3. *Category II Labeling.* The Panel recognizes that labels containing inaccuracies and inconsistencies may mislead the consumer about the anticipated benefits of a product. The Panel concludes that such labeling is unacceptable and classifies such claims as Category II for vaginal drug products. In reviewing the various terms, the Panel rejected them for a number of reasons. While these reasons may not be mutually exclusive, they do serve to define unacceptable labeling practices. Terms were placed in Category II when they were found to promote impressions of unproven effectiveness, to be vaguely stated, or not amenable to proof by scientific methods. While some of these terms may at times be found on labeling for cosmetic products, it is the Panel's conclusion that they are no less false and misleading in cosmetic product labeling than when they are used in labeling for OTC vaginal drug products.

a. *Unproven claims that promote impressions of effectiveness.*

"Effectively cleanses."
"Effectively deodorizes."
"Cleans thoroughly."
"Destroys odor."
"Continued vaginal cleanliness."
"Alters vaginal pH."
"Virtually non-irritating."
"Hospital tested effectiveness."
"Prevents itch."
"Will not sting or irritate."
"Cleanses more thoroughly than other douches."
"Removes contraceptive jellies and creams."

b. *Claims that are vaguely stated.*

"Fortified triple strength."
"Scientifically balanced formula."
"Intimately understood."
"Changes water into a cleansing solution."
"Completely refreshed."
"Naturally safe ingredients."
"Formula like the natural environment in your body."
"pH of 3.5."
"Complete feminine hygiene."
"Routine feminine hygiene."
"Personal hygiene."
"Reduces the number of pathogenic organisms."
"Efective liquid."
"Nonacid."
"Hypoallergenic."
"Intended for all women who want to enjoy extra confidence in meeting people."
"As with all vaginal douches, its function is not to cover up odor."
"Unlike spray deodorants which offer less protection."
"Feminine hygiene."
"Complete feminine daintiness."
"Clinically tested."
"Intimate cleanliness."
"Dainty and feminine."
"Gentle."
"Safe for delicate membranes."

c. *Claims that are not amenable to proof by scientific methods.*

"Contains only the mildest ingredients."
"Completely compatible with normal vaginal environment."
"Buffered to control a normal vaginal pH."
"Prevents disagreeable odors."

d. *Claims that imply a therapeutic value for a specific disease condition or require professional supervision and, therefore, represent misbranding for OTC use.*

"Antiseptic."
"Antibacterial."
"Vaginal antiseptic."
"Effective germ-killer."
"Therapeutic."
"For medicinal purposes."
"Use as directed by a doctor."
"Important, during menstruation, continue douching as instructed."

e. *Claims that imply unwarranted approval, e.g., the use of the following logos or symbols.*

Red cross logo.
Rx prescription logo.

f. *Instructions that may be potentially hazardous.* Any reference to occlusion of the vaginal opening during douching.

C. Category III Conditions

The following are Category III conditions for which available data are

insufficient to permit final classification at this time.

1. *Category III active ingredients*—a. *Ingredients for the relief of minor irritations of the vagina.*

Allantoin
Aloe vera, stabilized
Benzocaine
Boron compounds (boric acid, boroglycerine, sodium borate, or sodium perborate)
Edetate salts (edetate disodium or edetate sodium)
Nonionic surface active agents (nonoxynol 9 or octoxynol 9)
Oxyquinoline compounds (oxyquinoline citrate or oxyquinoline sulfate)
Phenol (in concentrations less than 1.5 percent)
Quaternary ammonium compounds (benzalkonium chloride or benzethonium chloride)
Vitamin A and ergocalciferol (Vitamin D)

(1) *Allantoin.* The Panel concludes that allantoin is safe in the concentration below, but data are insufficient to prove its effectiveness for the relief of minor vaginal irritations.

(i) *Safety.* Allantoin has had a long history of use in topical preparations without specific reports of toxicity appearing in the literature. In addition, the Panel is aware that this ingredient was thoroughly reviewed by the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn and Sunburn Treatment and Prevention Products and was found to be safe by that Panel in its report published in the Federal Register of August 25, 1978 (43 FR 38256–38257). It was also found to be safe for application to the oral mucosa by the Advisory Review Panel on OTC Dentifrices and Dental Care Agents in its report published in the Federal Register of November 2, 1979 (44 FR 63284–63285). Consequently, the Panel believes that allantoin is safe for vaginal use.

(ii) *Effectiveness.* Allantoin, also known as 5-ureidohydantoin, is an end product of purine metabolism (Ref. 1). Its medicinal properties were discovered during World War I when it was noticed that maggot-infested wounds healed better than uninfested wounds. The maggots were the source for the production of allantoin, the substance to which the healing was attributed (Ref. 2). Since that time, allantoin has been used in topical preparations for the stimulation of tissue repair in pus forming wounds, resistant dermatologic ulcers, acne, seborrhea, and other dermatologic conditions. Allantoin is also included in oral dental preparations and has frequently been combined with antifungals and antiseptics in the treatment of minor skin or mucous membrane irritations.

The only dosage form containing allantoin that the Panel reviewed was a vaginal cream (Refs. 3 and 4). No data were presented which proved that this ingredient is effective in the treatment of minor vaginal irritations.

(iii) *Dosage and directions.* The Panel recommends that allantoin be used in vaginal creams in a concentrations of 0.33 percent.

(iv) *Labeling.* The Panel recommends the Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.)

(v) *Evaluation.* The Panel recommends that allantoin be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

References

(1) "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ. p. 35, 1976.

(2) Harvey, S. C., "Topical Drugs," *in "Remington's Pharmaceutical Sciences," 15th Ed., edited by Osol, A., and J. E. Hoover, Mack Publishing Co., Easton, Pa. p. 729, 1975.*

(3) OTC Volume 110042.

(4) OTC Volume 110043.

(2) *Aloe vera, stabilized.* The Panel concludes that stabilized aloe vera is safe in the concentrations cited below, but that data are insufficient to prove its effectiveness for the relief of minor irritations of the vagina.

Aloe vera is a plant. For medicinal purposes, the leaves are cut and squeezed to produce an exudate. This exudate is not stable and deteriorates within several hours. A manufacturer submitted information on a vaginal cream and douche containing a stabilized form of aloe vera called "Stabilized Aloe Vera Gel" (Refs. 1 and 2).

(i) *Safety.* Aloe vera has been widely used in many areas of the world where the plant grows. The exudate from a freshly cut leaf is applied directly to the area that is to be treated. There are many reports of its use throughout history, even in the Papyrus Ebers 3,500 years ago. Treatment of minor burns, insect bites, and other conditions in which a wet dressing of aloe vera is used has been widely reported and handed down from generation to generation.

In the 1930's, several reports appeared in the scientific literature pertinent to the use of this substance for radium burns and ulcers, and no adverse effects were noted (Refs. 3 through 8). These reports, however, were not controlled studies and are presented only to support the safety of the ingredient.

In more than 100 reports of vaginal application of the stabilized aloe vera that were submitted to the Panel, no adverse side effects were reported (Ref. 1). In addition, the Panel notes that this same type of aloe vera product has been used as an oral solution for several years, and topically as a lotion and gel.

Standard animal testing procedures reviewed by the Panel have adequately demonstrated the safety of this substance in rats, dogs, and rabbits. The oral LD_{50} for rats is 21.5 grams per kilogram (g/kg). The oral LD_{50} for dogs was determined to be greater than 31.5 g/kg, with no deaths reported after 14 days of dosing. Acute dermal application for rabbits resulted in an LD_{50} determination of greater than 10 g/kg. No histopathic alterations were found in these animals, and no deaths or other signs of toxicity resulted from skin absorption of this substance (Ref. 1).

(ii) *Effectiveness.* Data submitted to the Panel indicate that stabilized aloe vera gel may be useful in the treatment of minor irritations of the vagina (Ref. 2).

Adequate in vitro testing shows the substance to be fungicidal and bacteriocidal for microorganisms such as *Candida albicans, Staphylococcus aureus, Streptococcus viridans, Trichomonas vaginalis,* and various tinea-causing microorganisms.

The clinical reports reviewed by the Panel were of an anecdotal nature with no indication of how the diseased states were diagnosed. There were no controls used; and, if culturing was used to identify the microorganisms, it was not reported. No reports of patient follow-ups were given (Ref. 1).

(iii) *Dosage and directions.* The Panel recommends that stabilized aloe vera be used in a cream base in a concentration of 75 percent and as a vaginal douch in a concentration of 90 percent. If applicable, the Panel further recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal; douches, and part IV.

paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that stabilized aloe vera be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

References

(1) OTC Volume 110043.

(2) OTC Volume 110042.

(3) Collins, C. E., "Alvagel as a Therapeutic Agent in the Treatment of Roentgen and Radium Burns," *The Radiological Review*, 57:137–138, 1935.

(4) Collins, C. E., and C. Collins, "Roentgen Dermatitis Treated with Fresh Whole Leaf of Aloe Vera," *American Journal of Roentgenology and Radium Therapy*, 33:396–397, 1935.

(5) Wright, C. S., "Aloe Vera in the Treatment of Roentgen Ulcers and Telangiectasis," *Journal of the American Medical Association*, 106:1363–1364, 1936.

(6) Waldron, C. H., and G. L. Jenkins, "Medicinal Agents in the Treatment of Burns," *American Professional Pharmacist*, 367:15–18, 1937.

(7) Rowe, T. D., B. K. Lovell, and L. M. Parks, "Further Observations on the Use of Aloe Vera Leaf in the Treatment of Third Degree X-Ray Reactions," *Journal of the American Pharmaceutical Association (Scientific Edition)*, 30:266–269, 1941.

(8) El Zawahry, M., M. R. Hegazy, and M. Helal, "Use of Aloe in Treating Leg Ulcers and Dermatoses," *Dermatology*, 12:68–73, 1973.

(3) *Benzocaine.* The Panel concludes that benzocaine is safe at the doses cited below, but that data are insufficient to prove its effectiveness for the relief of minor vaginal irritations.

(i) *Safety.* No human safety data on the use of benzocaine in vaginal drug products were presented to the Panel. However, benzocaine has been widely used as a topical anesthetic agent for many years. Topical use of benzocaine has been found to be very safe with only occasional allergic reactions being reported (Ref. 1). On rare occasions, methemoglobinemia has been reported (Ref. 2).

(ii) *Effectiveness.* As a component of rectal suppositories, benzocaine has activity in relieving pain and itching, and the Panel believes that this activity offers rationale for its inclusion in a vaginal drug product. The ingredient is generally recognized as an anesthetic agent in concentrations between 5 and 20 percent (Ref. 3); however, its presence in vaginal drug products is in such a low concentration (The only dosage form which contained benzocaine reviewed by the Panel was a combination vaginal suppository which claimed to have anesthetic properties (Ref. 4).) that the Panel recommends that testing be performed to substantiate its effective use.

(iii) *Dosage and directions.* The Panel recommends that benzocaine be used in vaginal suppositories in a concentration range of 0.2 to 0.65 percent.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel further recommends that the following additional indication and warning be present on all benzocaine-containing vaginal drug products.

(*a*) *Indication.* "Local anesthetic."

(*b*) *Warning.* "Do not use this product if you are allergic to local anesthetics."

(v) *Evaluation.* The Panel recommends that benzocaine be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

References

(1) "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p.495, 1976.

(2) Jacobziner, H., "Briefs on Accidental Chemical Poisonings in New York City," *New York State Journal of Medicine*, 61:2322–2325, 1961.

(3) Adriani, J., et al., "The Comparative Potency and Effectiveness of Topical Anesthetics in Man," *Clinical Pharmacology and Therapeutics*, 5:49–62, 1964.

(4) OTC Volume 110022.

(4) *Boron compounds (boric acid, boroglycerine, sodium borate, and sodium perborate—all at concentrations greater than preservative levels (1 percent boron)).* The Panel concludes that the data submitted on the boron compounds are insufficient to prove that they are effective for any of the following uses for vaginal drug products: relieving minor irritations of the vagina, decreasing pathogenic microorganisms, altering vaginal pH so as to encourage the growth of normal vaginal flora, or producing an astringent, mucolytic, or proteolytic effect. Additionally, there is a question as to the safety of these ingredients when used by the pregnant woman because of possible adverse effects upon the fetus. The Panel, therefore, classifies these ingredients in Category III with respect to both safety and effectiveness.

Boron compounds have been used for many years, following the popularization of the use of boric acid by Lord Lister in England in 1875. Boron and its salts are readily soluble in water, glycerin, and alcohol, and have been widely used as antiseptics in the form of solutions, ointments, and powders in ear, nose, throat, and eye preparations, as irrigant solutions in many body cavities, and as dressings for burns. Because of a mild astringent action, talc with boric acid has been employed as a dusting powder for its drying, anti-inflammatory, and antipruritic effects. Boron compounds have also been widely used in industry as food preservatives, although in recent years their use has sharply declined.

As experience with the toxic aspects of the borates accumulated and as more effective therapeutic agents were developed, borates fell into disfavor except for a few relatively minor uses. This may be due in part to the findings of Novak and Taylor (Ref. 1) which suggest that, in concentrations greater than 2 percent, normal phagocytosis is inhibited by the borates, thus counteracting their antibacterial action. However, boron concentrations between 0.5 and 2 percent were found by these same investigators (Ref. 2) to be bacteriostatic against three types of pyogenic bacteria commonly found in the eye.

(i) *Safety.* Gleason (Ref. 3) has placed boric acid and sodium perborate in toxicity class three to four (moderate to highly toxic), indicating that their probable lethal dose in humans could range from 50 mg to 5 g/kg of body weight. In an adult, the mean lethal dose of boric acid probably exceeds 30 g. Sodium borate and boroglycerine are class three toxins (moderately toxic) with a probable lethal dose in humans ranging from 500 mg 5 g/kg of body weight (Ref. 3).

As the antiseptic use of boric acid became widespread, reports of poisonings resulting from ingestion, application of ointments, and irrigation of closed body cavities began to appear in the literature. The current literature is replete with survey reports of poisonings and toxicity (Refs. 4 through 10). Many of the clinical cases of boric acid poisonings have resulted from accidents or misuse of the pure material, and not from the use of ointments or preparations containing less than 10 percent boric acid. Nevertheless, a review of 113 cases of boric acid poisoning by Goldbloom and Goldbloom (Ref. 8) emphasized that boric acid is readily absorbed from abraded skin surfaces and mucous membranes, and that young infants are particularly sensitive to the toxic effects of boric acid. The highest organ concentration of boron was found in the brain and changes in the central nevous system consisted of edema and congestion of

the brain and meninges. The review further indicated that of a group of 80 cases of boric acid poisonings in which adequate descriptions of signs and symptoms were recorded, nervous system symptoms were present in 67 percent. In younger patients, the common findings were those of meningeal irritation with convulsions, delirium, and coma appearing frequently. In adults, headache, marked weakness, and excitement or depression have been reported.

There are reports in the literature, which taken together, at least raise a question as to the potential teratogenicity or embryotoxicity of boron compounds. Ploquin (Ref. 11), reporting the work of Nguyen Phy Lich, indicated that boric acid (at 350 parts per million (ppm) as boron equivalent) in the diet of rats produced stillbirth or death 3 or 4 weeks after birth. Ploquin also related this finding to the earlier work of Caujolle et al. (Ref. 12) and the teratogenic effect observed by Ridgway and Karnofsky (Ref. 13). Landaur (Ref. 14), using the chick embryo technique to evaluate boric acid, found numerous skeletal anomalies unless riboflavin was given. The Panel recognizes that the latter test is of debatable value, relevant to humans, but still believes that such information is significant.

Weir and Fisher (Ref. 6) reported no adverse effects on the reproduction of rats receiving a diet containing either borax or boric acid at 117 and 350 ppm as boron equivalent. Litter size, weights of progency, and appearance were normal compared with those of the controls. However, rats fed borax or boric acid at 1,170 ppm as boron equivalent were found to be sterile. Microscopic examination revealed no viable sperm and atrophied testes in all males at the 1,170 ppm boron level. A similar result was obtained in male dogs treated at the same level. An attempt to obtain litters by mating females that were fed 1,170 ppm boron with males fed only the basal diet was unsuccessful. Examination of the ovaries of these females showed evidence of decreased ovulation. Although Weir and Fisher (Ref. 6) offered no suggestion as to the exact mechanism by which boron exposure resulted in sterility, it appears to be possible that the pituitary secretion of follicle stimulating hormone was inhibited.

In this same context, it is significant that in cases of boric acid poisoning the highest concentrations of boron have been found in the brain (Refs. 5 and 15). In a study by Dousset (Ref. 16) on the penetration of boron into the cerebrospinal fluid of the pregnant rat, an aqueous solution of boric acid was injected intraperitoneally into pregnant and nonpregnant rats in a dosage of 0.2 g of boron per kg of body weight. Boron could not be detected in the cerebrospinal fluid of the nonpregnant rats. It appeared, however, in substantial concentrations (4.7 ug/mL) in the cerebrospinal fluid of pregnant rats beginning on days 7 to 20 of gestation. These levels dropped abruptly after birth. The author concluded that the blood-brain, i.e., hemo-meningeal, barrier to the passage of boron is lowered during pregnancy.

The study by Dousset (Ref. 16) also suggests the possibility that boric acid may be absorbed from the vagina in early pregnancy when a woman does not know that she is pregnant, and that placental transfer of boron from the maternal compartment to the fetal compartment may lead to the localization and even concentration of boron in critical tissues, such as the neural tubes or brain of the developing embryo or fetus. Additionally, previously cited reports have shown that the fetus is particularly susceptible to the toxic action of chemical pollutants in general and that the placenta is not an effective barrier.

Because of its concerns about the safety of boron compounds, the Panel attempted to determine if there was any evidence that boric acid is absorbed to a significant extent from the vagina. In the review by Goldbloom and Goldbloom (Ref. 8), three cases of boric acid intoxication following the application of vaginal packs of boric acid were cited. Swate and Weed (Ref. 17) successfully treated vulvovaginal candidiasis with boric acid. Capsules containing 600 mg of boric acid were inserted in the vaginas of nonpregnat women twice daily for 14 days, and boric acid could not be detected in the serum. However, the Panel points out that a relatively insensitive turmeric paper test was used. Swate and Weed were of the opinion that traumatized vaginal mucosa could possibly absorb appreciable quantities of boric acid.

In studies described in a submission to the Panel (Ref. 18), plasma borate levels were determined in normal women (Group I), women with pre-existing vaginitis (Group II), and normal women who had been regular users of a boric acid douche for at least 5 years (Group III). Measured before and after douching with 0.8 percent acid, the borate levels remained at normal physiological levels in all three groups. The investigators concluded that the borate ion was not absorbed to any measurable extent from the vaginal tract. In the opinion of the Panel, this conclusion would have been on firmer ground if the borate concentration in the urine had also been measured because this is the major route for the excretion of boric acid (Ref. 5).

In laboratory experiments carried out on rabbits the half-time (t ½) for the disappearance of boric acid from the blood was found to be 6.5 to 11 hours (Ref. 19). When the rabbits' kidneys were damaged by sulfonamide treatment, boric acid disappeared much more slowly from the blood, i.e., t ½ = 12.5 to 73 hours. Absorption of boric acid in humans with impaired kidney function thus may lead to high blood levels of boric acid. Farr and Konikowski (Ref. 20) found the renal clearance rate for sodium perborate to be 40 and 39 mL per minute per 1.73 square meters (m^2) surface area in mice and humans, respectively. These rates are much lower than those for the glomerular filtration rate (125 mL per minute) or the urea clearance rate (70 mL per minute) calculated per 1.73 m^2 surface area in humans. The rate of disappearance of borate from blood has not been established.

In studies on dogs by Pfeiffer et al. (Ref. 5) boric acid ointment was applied to burned areas or to wounds. Large amounts of borate were subsequently excreted in the urine but appreciable amounts also accumulated in the brain, liver, kidneys, and body fat. However, borate levels in the plasma were not reported.

Toxic symptoms of boron poisoning include gastrointestinal upsets, vomiting and diarrhea, gastrointestinal bleeding, central nervous system depression, acute erythematous rashes with exfoliation, systemic shock with vascular collapse, and many other symptoms referable to other body systems. Fatal doses by mouth range from 2 to 3 g for small children up to 30 g for adults. As much as 50 percent of the ingested or absorbed dose is excreted through sweat and the kidneys within 24 hours, although excretion continues for several weeks.

Following its review of the literature, the Panel concluded that boric acid in vaginal preparations might be hazardous to the fetus, breast-fed infant, and possibly to the woman herself. If boric acid preparations are to be used in the vagina, it would be important to determine the rate of vaginal absorption of boric acid particularly during early pregnancy, the rate of uptake and biological half-life of boric acid in critical fetal and maternal tissues, and the extent of excretion of boron in milk.

Studies on the biochemical mechanisms by which boric acid exerts its toxic action are also needed. The affinity of boric acid for certain tissues and their molecular components may reside in its well-known property for forming complexes with polyhydroxy compounds, particularly those containing a 1:2-cis-diol group, e.g., certain carbohydrates and polyhydroxylated fatty acids, and with glycerol (Ref. 21).

(ii) *Effectiveness.* No data have been presented to the Panel which prove that the boron compounds are effective in treating conditions of the vagina which are amenable to self-diagnosis and self-treatment, i.e., relieving minor irritations of the vagina, decreasing pathogenic microorganisms, altering vaginal pH so as to encourage the growth of normal flora, or producing an astringent, mucolytic, or proteolytic effect. The only dosage forms containing these ingredients reviewed by the Panel were a vaginal powder, a vaginal gel, a vaginal suppository, and a hygienic powder.

(iii) *Dosage and directions.* The Panel is unable to recommend any concentrations greater than preservative levels (1 percent boron) at which boron compounds are safe and effective for use in vaginal drug products. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina. The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel concludes that the presence of the boron compounds in a vaginal preparation which could be used in early pregnancy presents a question of safety for the fetus. However, because the Panel cannot conclude that the ingredients are safe or not, it recommends that the boron compounds be subjected to the safety testing guidelines discussed in the first portion of the Panel's review of OTC vaginal contraceptive drug products, published in the **Federal Register** of December 12, 1980. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

Because of the lack of effectiveness data, the Panel recommends that the boron compounds be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F. below—Testing Guidelines for Effectiveness of Vaginal Drug Products.)

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(5) *Edetate salts (edetate disodium or edetate sodium).* The Panel concludes that data are insufficient to prove that the edetate salts edetate disodium or edetate sodium are safe and effective for the relief of minor vaginal irritations.

(i) *Safety.* Until very recently, it was believed that the edetate salts in vaginal drug products took part only in the metabolic process of binding calcium ions on flagellate surfaces. However, more recent studies have noted that the capacity of edetate salts to tie up certain metal ions may cause toxic effects (Regs. 1 and 2). Studies on female rats that were fed ethylenediaminetetraacetic acid (EDTA) during the early period of fertilization suggest that a subsquent loss of zinc ions led to numerous anomalies in the developing fetus (Refs. 1 and 2). These anomalies can be prevented by feeding the mother additional supplies of zinc, which then provide enough zinc so that the edetates become nonfunctional so far as the conceptus is concerned. Prior to 1970, the literature contained no references documenting these adverse effects from the use of the edetate salts.

The fact that supplemental ions can be used as such does not justify the use of the edetate salts in vaginal drug products if appotential hazard exists. The Panel is uncertain as to whether or not the edetate salts pose such a hazard when used in the low concentrations present in vaginal drug products. However, due to the serious nature of the adverse effects of these ingredients, as reported in the literature, the Panel recommends that they be further tested to prove their safety.

(ii) *Effectiveness.* The edetates have been used for many years in food processing, in the treatment of heavy metal poisoning, and as carriers for

certain ions in industrial processes. Their use in vaginal douches is primarily in the treatment of flagellate microorganisms (Refs. 3, 4, and 5). Effectiveness depends upon the capacity of the edetates to tie up calcium ions on surface areas of the flagella, thereby interfering with the essential metabolism of the microorganism and eventually leading to the death of the flagellate. The Panel believes that through this activity there is a potential for the edetates to make the OTC claim of relieving minor irritations of the vagina, as well as the professional antibacterial claim of reducing the number of pathogenic microorganisms. The only dosage forms containing these ingredients reviewed by the Panel were a vaginal suppository and a vaginal douche.

(iii) *Dosage and directions.—(a) For products containing edetate disodium.* The Panel recommends that edetate disodium be used as a vaginal suppository at a concentration of 0.01 percent or as a vaginal douche at a concentration of 0.33 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(*b*) *For products containing edetate sodium.* The Panel recommends that edetate sodium be used as a vaginal douche at a concentration of 4.4 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part III. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.) In addition, the Panel recommends that the following information be contained in the labeling of products provided to health professionals.

(a) Indication for professional labeling. "For the treatment of *Trichomonas vaginalis.*"

(b) Warning. "Products containing edetate salts should not be used when pregnancy is either contemplated or suspected because of possible interference with organ development of the fetus."

(v) *Evaluation.* The Panel concludes that the presence of edetate disodium or edetate sodium in a vaginal preparation which could be used in early pregnancy presents a question of safety for the fetus. However, because the Panel cannot conclude that these ingredients are safe or not, it recommends that the edetate salts be subjected to the teratology testing descussed in the first portion of the Panel's review of OTC vaginal contraceptives, published in the **Federal Register** of December 12, 1980 (see part II. paragraph D.—Drug Evaluation for Safety (45 FR 82024)).

Data submitted to the Panel support the effectiveness of edetate salts in the treatment of trichomonas infections, which is a condition not amenable to self-diagnosis and self-treatment. The Panel recommends that additional studies be conducted to establish the safety and effectiveness of edetate sodium when used at a final concentration of 4.4 percent.

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(6) *Nonionic surface active agents (nonoxynol 9 or octoxynol 9).* The Panel concludes that the nonionic surface active agents nonoxynol 9 and octoxynol 9 are safe at the doses cited below, but that data are insufficient to prove that these ingredients are effective in relieving minor irritations of the vagina.

(i) *Safety.* The nonionic surface active agents have been found to be safe in the doses used in vaginal douche products. The safety of these ingredients is discussed above (see part IV. paragraph A.1.b.(2) above—Nonionic surface active agents (nonoxynol 9 or octoxynol 9)) and in that portion of the Panel's review which dealt with OTC vaginal contraceptives, published in the **Federal Register** of December 12, 1980 (45 FR 82028–92030).

(ii) *Effectiveness.* During its extensive evaluation of these ingredients, the Panel reviewed clinical data which indicated that a reduction of pathogenic vaginal microorganisms occurred after douching with a vaginal preparation containing nonoxynol 9 (Ref. 1). In vitro studies also reported the inhibition of *Trichomonas vaginalis* with this product and the ingredient alone (Ref. 1). The Panel, however, concludes that these clinical and in vitro data are inadequate to substantiate either the OTC claim of relieving minor irritations of the vagina or the professional antibacterial claim of reducing the number of pathogenic microoganisms. Therefore, the Panel recommends that further testing be conducted to substantiate these claims. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

(iii) *Dosage and directions.—(a) For products containing nonoxynol 9.* The Panel recommends that nonoxynol 9 be used as a vaginal douche in a concentration of 0.02 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(*b*) *For products containing octoxynol 9.* The Panel recommends that octoxynol 9 be used as a vaginal douche in a concentration of 0.088 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends the Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that the nonionic surface active agents nonoxynol 9 and octoxynol 9 be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove their effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

Reference

(1) OTC Volume 110019.

(7) *Oxyquinoline compounds (oxyquinoline citrate or oxyquinoline sulfate).* The Panel concludes that data are insufficient to prove that the oxyquinoline compounds oxyquinoline citrate or oxyquinoline sulfate are safe

and effective for the relief of minor irritations of the vagina.

(i) *Safety.* Oxyquinoline compounds were used extensively in the 1930's and 1940's for the treatment of gonorrhea and other infections. The oxyquinoline complexes with metal ions such as zinc and copper in solution, and the complex thus formed is believed to be an active antibacterial agent (Refs. 1, 2, and 3). In the treatment of gonorrhea, the agents were applied to the urethra and vagina in repeated, concentrated doses (Refs. 4, 5, and 6). In these studies there were no reports of adverse reactions.

Over the past few years, there has been increasing concern over the potential carcinogenicity of these substances. In a presentation to the Panel, Dr. Marjorie Horning postulated that, based on their chemical structure, these compounds would probably give positive results in the in vitro Ames and Huberman tests for mutagenicity, which may be predictive of carcinogenicity (Ref. 7). However, to the Panel's knowledge these tests have not been performed.

There have been numerous studies in animals on the carcinogenicity of 8-hydroxyquinoline. Many of these were reviewed and summarized by a working group of the World Health Organization's International Agency for Research on Cancer (Ref. 8). This working group, however, left the question of the carcinogenic potential of these substances unresolved. Some studies indicated significant carcinogenic effect while others did not. These studies included vaginal application in mice and rats but the results were inconclusive.

(ii) *Effectiveness.* The oxyquinolines are historically recognized to be antibacterial agents and, therefore, may be of value in relieving minor vaginal irritations. However, the Panel received no data which would substantiate an antibacterial claim. The only dosage form containing these ingredients reviewed by the Panel was a vaginal douche.

(iii) *Dosage and directions.* The Panel recommends that oxyquinoline citrate or oxyquinoline sulfate be used as a vaginal douche at a concentration of 2 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c. (1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that oxyquinoline citrate or oxyquinoline sulfate be subjected to the carcinogenicity testing presented in the first portion of the Panel's review on OTC vaginal contraceptives in order to prove their safety for use in OTC vaginal products. (See part II. paragraph D.5.—Mutagenicity and carcinogenicity studies, 45 FR 82022.)

The Panel further recommends that oxyquinoline citrate and oxyquinoline sulfate be subjected to the studies outlined in the testing guidelines for OTC vaginal drug products in order to prove their effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

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(8) *Phenol.* The Panel concludes that data are insufficient to prove that phenol in concentrations of 1.5 percent and less is safe and effective for the treatment of minor irritations of the vagina.

(i) *Safety.* The safety of phenol has been extensively reviewed by the Advisory Review Panel on OTC Topical Antimicrobial Drug Products in the **Federal Register** of September 13, 1974 (39 FR 33133). Although not specifically concluding that phenol in a concentration of 1.5 percent and less is unsafe, that Panel stated that there are inadequate data on the elimination and the toxicity of this ingredient in young animals and thus recommended that further research in young animals be undertaken in order to define the toxicity potential of phenol in human infants.

The Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products agrees with the OTC Topical Antimicrobial Drug Products Panel in that it believes that the use of phenol in concentrations of 1.5 percent or less does not present a known health hazard to the consumer. This Panel concludes, however, that since there are no safety data pertinent to the vaginal use of phenol, this ingredient should be further tested to prove its lack of systemic and local toxicity when applied to the vaginal mucosa.

(ii) *Effectiveness.* The Panel believes that phenol, by virtue of its antibactierial activity, could be effective in relieving minor vaginal irritations. Dosage forms containing this ingredient reviewed by the Panel were a vaginal douche, vaginal suppository, and vaginal ointment. However, no data to prove antibacterial effectiveness were submitted to this Panel.

The effectiveness of topically applied phenol was also reviewed by the Advisory Review Panel on OTC Topical Antimicrobial Drug Products (39 FR 33133). That Panel concluded that a demonstration of antibacterial effectiveness at 1.5 percent and less concentration was needed.

(iii) *Dosage and directions.* The Panel recommends that phenol be used at a concentration range of 0.31 to 1.5 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that phenol in concentrations of 1.5 and less be

subjected to the safety testing discussed in the first protion of the Panel's review of OTC vaginal contraceptives (see part II. paragraph D.2.c.(1)—Local toxicity studies, and part II paragraph D.4—Vaginal absorption studies (45 FR 82021 and 45 FR 82022)). The Panel also recommends that phenol in concentrations of 1.5 percent and less be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

(9) *Quaternary ammonium compounds (benzalkonium chloride or benzethonium chloride).* The Panel concludes that data are insufficient to prove that the quaternary ammonium compounds benzalkonium chloride and benzethonium chloride are safe and effective for the relief of minor vaginal irritations.

The quaternary ammonium compounds which are classified as cationic surfactants or detergents, and commonly known as "quaternaries," are organic substituted ammonium compounds, a class of amines. The biochemical and pharmacological properties of the quaternaries under consideration in this document, i.e., benzalkonium chloride and benzethonium chloride, are sufficiently similar to permit joint evaluation prior to their consideration as individual ingredients. When only one ingredient is discussed below, that is because data exist for only that specific ingredient.

The quaternaries consist of an organically (lipophilic)-substituted ammonium group in which the nitrogen atom is in a +5 oxidation state and is associated with a negative ion such as chloride or sulfate. They are wetting agents with detergent, keratolytic, and emulsifying properties. In the past, quaternaties have been considered to be germicidal for many microorganisms in vitro, although some strains of *Pseudomonas* species, *Mycobacterium tuberculosis*, and other gram-negative microorganisms have been considered to be resistant to this action. Gram-positive microorganisms generally are more susceptible to the germicidal action of the quaternaries than gram-negative microorganisms. Reports of antiviral, antifungal, and sporicidal activity are conflicting, probably due to variable conditions of study (Ref. 1).

Quaternaries readily dissolve in water and ionize. The nitrogen-substituted part of the molecule is positively charged and lipophilic; therefore, it imparts high surface activity to the compounds. The surface active ability is associated with the bactericidal activity of the quaternaries. The latter action is variously attributed to the inactivation of cellular enzymes, the denaturing of proteins, and the disruption of the cell membrane.

Anionic and cationic surfactants interfere with each other's germicidal activity and cannot be combined. On the other hand, nonionic surfactants (with the exception of polysorbate 80) can be combined with quaternaries and have been widely used as germicidal detergents. In the dilute solutions generally used, these compounds have been considered to be practically nontoxic and nonirritating to human tissue.

The Panel has noted that initially the quaternaries were received with enthusiam and have, in the past, been considered to be very safe and effective germicides. They have been widely used in clinical practice for wound and skin cleansing and instrument sterilization. However, after consideration of the material summarized below, the Panel has concluded that there is significant doubt concerning both the safety and effectiveness of these compounds (Refs. 1, 2, and 3).

Early estimations of the bactericidal activity of quaternaries were exaggerated. This occurred for various reasons. For example, the carryover of the quaternary comound resulting from its adsorbtion on the surface of the bacteria was enough to produce bacteriostasis in subculture. (Addition of a neutralizing chemical results in removal of the bacteriostatic effect.) Furthermore, the high surface activity of the quaternaries may cause "clumping" of bacteria, thus isolating a significant population of a false estimation of the actual reduction in the bacterial population (Ref. 1).

The quaternaries are inactivated by interaction with a variety of substances such as soaps, anionic surfactants, tissue, protein matter, cellulose, plastic, and cork. In addition, their antibacterial effect may be decreased or eliminated by contact with their container, gauze, or the tissue in the body to which the compound is being applied. Quaternary compounds also form a film on the skin surfaces that may be sterile on its outer surface (antibacterial), but remain contaminated on its inner surface.

Gram-negative microorganisms are relatively resistant to the antibacterial effect of quaternaries and, in fact, bacterial growth may actually be enhanced by the presence of a quaternary substance in the culture medium.

Outbreaks of *Pseudomonas* bacteremia in several hospitals have been shown to be due to the use of contaminated solutions of quaternary ammonium compounds (Refs. 2 through 6). Consequently, warnings and admonitions against the continued use of quaternaries as sterilizing agents have appeared in the editorial pages of several medical journals (Refs. 7, 8, and 9).

Thus, there is a large body of evidence demonstrating the relative ineffectiveness of quaternaries as bactericidal agents and raising significant concern as to their safety. Nevertheless, in the long marketing history of douches and vaginal compounds containing these ingredients, no vaginal or pelvic infections attributable to these compounds have been reported. Because specific investigations of these problems have not been carried out, however, this lack of reported adverse effects cannot be accepted as proof of safety.

Toxicologically, the quaternaries appear to be relatively safe when used in dilute solution and without occlusive dressings. Data from studies of local irritation and sensitization in humans support the conclusion of a low level of toxicity. There are no direct data on human systemic absorption in the data submitted to the Panel, although a warning of skeletal muscle weakness is noted, and caution is urged when quaternaries are used for irrigating body cavities (Ref. 10).

Finally, since the combination of quaternary compound with anionic surfactants and with Tween 80 would result in the inactivation of the quaternary's surface active ability, such combinations would be considered to be ineffective.

(i) *Safety.* In dilute solution or concentrations of 0.13 percent or less, benzalkonium chloride has low local and systemic toxicity and a wide margin of safety. Like other quaternary ammonium compounds, it is inactivated by soaps, protein, plastic, and cellulose. It may produce a film on skin surfaces which is sterile on its superficial surface, but contaminated with bacteria on its inner surface. Contamination of solutions containing benzalkonium chloride has been specifically implicated in outbreaks of bacteremia in hospital populations, as cited above. However, there is no evidence that vaginal drug products containing benzalkonium chloride as an ingredient have been associated with the introduction of pathogenic microorganisms into the vagina or resulted in gram-negative bacteremia.

Benzethonium chloride is generally recognized to be safe in dilute solutions when applied to the skin. In additions to

acute and chronic toxicity studies of this ingredient in animals, the Panel reviewed animal and human safety data for other quarternary ammonium compounds. Based on these reviews, the Panel concludes that benzethonium chloride, as a single ingredient, is safe in the concentrations used intravaginally. However, the Panel also believes that the addition of quaternaries to any vaginal product represents enough of a concern regarding sterility and the possible overgrowth of pathogenic microorganisms to warrant further microbiological testing in order to prove that these products are safe for OTC use.

(ii) *Efectiveness.* The only dosage form containing these ingredients reviewed by the Panel were a vaginal douche, a vaginal suppository, and a vaginal foam, However, the Panel did not receive any data which prove that the quaternaries are effective in the treatment of minor irritations of the vagina.

The bactericidal effectiveness of quaternary ammonium compounds is questioned today, not only when they are used under circumstances which deactivation of the quaternary solution occurs, but also because of laboratory techniques which may lead to mistaken conclusions of effectiveness.

In the past, and in many of the studies in the submitted data, benzalkonium chloride and benzethonium chloride have been considered to be superior bactericidal agents. However, in view of the significant doubts concerning the bactericidal effectiveness of this class of compounds, the Panel concludes that the quaternary ammonium compounds should be considered to be of unproven effectiveness for the OTC claim of relieving minor irritations of the vagina and the potential claim in professional labeling for reducing pathogenic microorganisms.

(iii) *Dosage and directions.*—(*a*) *For products containing benzalkonium chloride.* The Panel recommends that benzalkonium chloride be used in a concentration of 0.1 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(b) For products containing benzethonium chloride. The Panel recommends that benzethonium chloride be used in a concentration range of 0.2 to 0.5 percent. If applicable, the Panel recommends that the manufacture provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.) The Panel also recommends Category I labeling for vaginal douches (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that the quaternary ammonium compounds benzalkonium chloride and benzethonium chloride be subjected to microbiological testing in order to prove that their use in vaginal products presents no threat of overgrowth of pathogenic microorganisms. (See part IV. paragraph F.1.b. below—Decreasing the number of pathogenic microorganisms). The Panel also recommends that the quaternaries be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove its effectiveness. (See part IV. paragraph F.1.a. below—Relieving minor irritations of the vagina.)

The Panel further recommends that the quaternaries be subjected to safety testing according to the guidelines discussed in the first portion of the Panel's review of OTC vaginal contraceptives. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

References

(1) Sykes, G., "Disinfection and Sterilization," 2d Ed., J. B. Lippincott, Philadelphia, pp. 382–380, 1965.

(2) Malizia, W. F., et al., "Benzalkonium Chloride as a Source of Infection," *The New England Journal of Medicine*, 263:800–802, 1960.

(3) Frank, M. J., and W. Schaffner, "Contaminated Aqueous Benzalkonium Chloride: An Unnecessary Hospital Infection Hazard," *Journal of the American Medical Association*, 236:2418–2419, 1976.

(4) Kaslow, R. A., D. C. Mackel, and G. F. Mallison, "Nosocomial Pseudobactermia: Positive Blood Cultures Due to Contaminated Benzalkonium Antiseptic," *Journal of the American Medical Association*, 236:2407–2409, 1976.

(5) Dixon, R. E., et al., "Aqueous Quaternary Ammoninum Antiseptics and Disinfectants: Use and Misuse," *Journal of the American Medical Association*, 236:2415–2417, 1976.

(6) Plotkin, S. A., and R. Austrian, "Bacteremia Caused by Pseudomonas Sp. Following the Use of Materials Stored in Solutions of a Cationic Surface-Active Agent," *American Journal of Medical Science*, 235:621–627, 1958.

(7) Hussey, H. H., "Benzalkonium Chloride: Failures as an Antiseptic," *Journal of the American Medical Association*, 236:2433, 1976.

(8) Fox, R. F., and I. Douglas-Wilson, Eds., "Failure of Detergent to Disinfect," *Lancet*, 2:306, 1958.

(9) Anonymous Editorial, "Bacteria in Antiseptic Solutions," *British Medical Journal*, 2:436, 1958.

(10) "AMA Drug Evaluations—1977," 3d Ed., American Medical Association, Chicago, pp. 890–891, 1977.

(10) *Vitamin A and ergocalciferol (Vitamin D).* The Panel concludes that vitamins A and D are safe in the concentrations cited below, but that data are insufficient to prove their effectiveness for the relief of minor irritations of the vagina.

(i) *Safety.* The Panel is unware of any safety problem associated with the topical use of vitamins A and D. These vitamins have been found to be safe for application to the rectal mucosa by the Advisory Review Panel on OTC Hemorrhoidal Drug Products.

(ii) *Effectiveness.* Vitamins A and D have been historically known as soothing, healing substances when used topically. The Advisory Review Panel on OTC Hemorrhoidal Drug Products, however, has thoroughly reviewed the claim of "wound-healing" and has found no basis for this claim. The only dosage form, containing these ingredients reviewed by the Panel was vaginal cream which claims to relieve minor irritations (Refs. 1 and 2). The Panel concludes that although these ingredients are known to have been used for the treatment of infections, burns, and wounds (Ref. 3), there are no data which substantiate their inclusion as active ingredients in a vaginal drug product.

(iii) *Dosage and directions.*—(*a*) *For products containing vitamin A.* The Panel recommends that vitamin A be used in vaginal creams in a concentration of 0.035 percent.

(*b*) *For products containing ergocalciferol.* The Panel recommends that ergocalciferol be used in vaginal creams in a concentration of 0.07 percent.

(iv) *Labeling.* The Panel recommends the Category I labeling for ingredients used for the relief of minor irritations of the vagina. (See part IV. paragraph A.2.c.(1) above—Ingredients for the relief of minor irritations of the vagina.)

(v) *Evaluation.* The Panel recommends that vitamins A and D be subjected to the studies outlined in the testing guidelines for vaginal drug products in order to prove their effectiveness. (See par' IV. paragraph

F.1.a. below—Relieving minor irritations of the vagina.)

References

(1) OTC Volume 110042.
(2) OTC Volume 110043.
(3) Mandel, H. G., "Fat Soluble Vitamins-Vitamin A," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S., and A. Gilman, The MacMillan Co., New York, p. 1577, 1975.

b. *Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.*

Acetic acid
Boron compounds (boric acid, boroglycerine, sodium borate, and sodium perborate—all at concentration greater than preservative levels (1 percent boron))
Citric acid
Lactate (as either lactic acid or sodium lactate)
Sodium bicarbonate
Sodium carbonate
Tartaric acid

(1) *Acetic acid.* Although vinegar was not submitted for review, the Panel has evaluated this ingredient (also known as acetic acid solution) because it has a long history of use as a vaginal douche. Vinegar is approximately 4 to 6 percent acetic acid; the Panel concludes that this concentration is safe when properly diluted in vaginal douches. However, data are insufficient to prove that vinegar is effective in altering the vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* When vinegar is used in the usual dose of 1½ teaspoonsful (7.5 mL) per liter (or per quart) of water as vaginal douche, the Panel concludes that it is safe for vaginal use.

(ii) *Effectiveness.* The only dosage form containing vinegar reviewed by the Panel was a vaginal douche. The Panel concludes that data are insufficient to determine the extent to which vaginal pH is altered by vinegar or if such action is of sufficient duration to encourage the growth of normal vaginal flora.

(iii) *Dosage and directions.* The Panel recommends that vinegar be used as a douche in a concentration of 1½ teaspoonsful (7.5 mL) per liter of water. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c.(2) above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* If vinegar is to be included as an active ingredient in any OTC vaginal drug product which claims to alter vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora, the Panel recommends that it be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.c. below—Altering vaginal pH so as to encourage the growth or normal vaginal flora.) The Panel recognizes the difficulty of regulating the use of household materials such as vinegar for self-prescribed uses such as vaginal douching. The use of a dilute vinegar solution as a cleansing, refreshing, and soothing douche is considered cosmetic and, therefore, not under the purview of this Panel. (See part III. paragraph C.1. above—Drug vs. cosmetic status.)

(2) *Boron compounds (boric acid, boroglycerine, sodium boarate, and sodium perborate—all at concentrations greater than preservative levels (1 percent boron)).* The Panel concludes that data are insufficient to prove that boron compounds are safe and effective for use in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora. The Panel's review of the safety and effectiveness of boron compounds above includes reference to their use to alter vaginal pH (see part IV. paragraph C.1.a.(4) above).

(3) *Citric acid.* The Panel concludes that citric acid is safe in the concentrations generally used in vaginal douches, but that data are insufficient to prove that it is effective in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* Long medical use of weak acid douches for vaginal cleansing, and the notable lack of any report of irritation or toxicity, indicate that citric acid is safe for vaginal use. The Panel is aware of one animal toxicity study which determined the LD_{50} of citric acid in rats to be 975 mg/kg (Ref. 1).

(ii) *Effectiveness.* In vaginal douches, citric acid is used as a buffer to assist in maintenance of the slightly acidic pH of the normal vagina (3.0 to 5.5) (Ref. 2). The potential usefulness of this ingredient as a vaginal acidifier is supported by the fact that normal vaginal secretions are acidic (except at the time of ovulation) (Ref. 3). The only dosage form containing this ingredient reviewed by the Panel was a vaginal douche. However, no data have been presented to the Panel which demonstrate to what extent vaginal pH is altered by citric acid or prove that this action is of sufficient duration to result in a beneficial effect on the growth of normal vaginal flora.

(iii) *Dosage and directions.* The Panel recommends that citric acid be used as a douche in a concentration range of 0.1 to 0.5 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c.(2) above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that citric acid be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.c. below—Altering vaginal pH so as to encourage the growth of normal vaginal flora.)

References

(1) United States Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health, "Toxic Substances List," p. 262, 1973.
(2) OTC Volume 110008.
(3) Long, J. H., et al., "The Vaginal Douche: Observations on Some of Its Effects," *Western Journal of Surgery, Obstetrics and Gynecology*, 71:122–127, 1963.

(4) *Lactate (as either lactic acid or sodium lactate).* The Panel concludes that lactic acid alone, and in combination with sodium lactate, is safe in the concentrations generally used as vaginal douches. However, the data are insufficient to prove that these ingredients are effective in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* The Panel has reviewed both animal and human toxicity data on lactic acid and its sodium salt. The LD_{50} of lactic acid has been determined to be 3.73 g/kg in rats and 1.81 g/kg in guinea pigs (Ref. 1). It has been given a toxicity rating of three (Ref. 2), meaning that pure lactic acid itself is moderately toxic, the probable oral human lethal dose being from 500 mg/kg to 5 g/kg.

Although tests reported are not pertinent to the vaginal use of highly dilute solutions of lactic acid, dilute preparations of this substance do have a corrosive action on the esophagus and stomach (Ref. 2).

The safety of lactic acid as an ingredient in vaginal douches is supported not only by a long history of use without reported adverse effects, but also by general recognition in the medical literature (Refs. 3 through 7).

Sodium lactate is a neutral salt and is nontoxic. A long history of low toxicity in the use of sodium lactate in vaginal douche preparations indicates its safety for human use.

(ii) *Effectiveness.* The potential effectiveness of lactic acid and the lactic acid-sodium lactate combination in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora is supported by the fact that lactic acid is present in the normal vagina and aids in maintaining the normal vaginal pH in an acid state. The only dosage form containing these ingredients reviewed by the Panel was a vaginal douche. The Panel received no data, however, to substantiate the above claim and, therefore, recommends that further testing be conducted.

(iii) *Dosage and directions.* The Panel recommends that lactic acid alone and in combination with sodium lactate be used as a douche in a concentration range of 0.4 to 1.3 percent. If applicable, the Panel further recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c. (2) above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that lactic acid and the combination of lactic acid and sodium lactate be subjected to the studies outlined in the testing guidelines in order to prove their effectiveness. (See part IV. paragaph F.l.c. below—Altering vaginal pH so as to encourage the growth of normal vaginal flora.)

References

(1) Smyth, H. F., Jr., J. Seaton, and L. Fischer, "The Single Dose Toxicity of Some Glycols and Derivatives," *Journal of Industrial Hygiene and Toxicology*, 23:259–268, 1941.

(2) Gosselin, R. E., et al., "Clinical Toxicology of Commercial Products. Acute Poisoning," 4th Ed., The Williams and Wilkins Co., Baltimore, MD, p. 71, 1976.

(3) "AMA Drug Evaluations—1973," 2d Ed., American Medical Association, Acton, MA, p. 627, 1973.

(4) Brewer, J. I., "Textbook of Gynecology," 3d Ed., The Williams and Wilkins Co., Baltimore, p. 219, 1961.

(5) Curtis, A. H., and J. W. Huffman, "A Textbook of Gynecology," 6th Ed., p. 624, 1950.

(6) Greenhill, J. P., "Office Gynecology," 9th Ed., Year Book Medical Publishers, Chicago, pp. 84 and 181, 1971.

(7) Kistner, R. W., "Gynecology: Principles and Practice," 2d Ed., Year Book Medical Publishers, Chicago, p. 81, 1971.

(5) *Sodium bicarbonate.* The Panel concludes that sodium bicarbonate is safe in the concentrations generally used in vaginal douches, but that data are insufficient to prove that it is effective in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* Sodium bicarbonate is a widely used ingredient in many OTC drugs. Its oral use was found to be safe by the Advisory Review Panel on OTC Antacid Drug Products in the **Federal Register** of June 4, 1974 (39 FR 19875) and by FDA (21 CFR 331). The use of sodium bicarbonate as an ingredient in vaginal douches is recognized in the general literature (Refs. 1 and 2); however, no indication for use or substantiation of safety for vaginal use is specifically mentioned.

(ii) *Effectiveness.* Sodium bicarbonate has been used as an antacid for stomach distress and as an antipruritic paste for bee stings. Alone of mixed with table salt it has also been used in eyewash, nose drops, gargle, otic preparation, and toothpaste. Sodium bicarbonate is available in powder form without restriction and can be found in most kitchens or medicine chests.

The rationale for including sodium bicarbonate in a douche presumably is because it will neutralize the acidity of vaginal secretions. However, observations have indicated that such an action is only temporary (Refs. 3 and 4).

The only dosage form containing this ingredient reviewed by the Panel was a vaginal douche. No data were presented to the Panel which indicate that sodium bicarbonate is effective in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(iii) *Dosage and directions.* The Panel recommends that sodium bicarbonate be used as a douche in a concentration range of 1 and 2 teaspoonsful per liter of water.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c.(2) above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* If sodium bicarbonate is to be included as an active ingredient in any OTC vaginal drug product which claims to alter vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora, the Panel recommends that it be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.c. below—Altering vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel recognizes the difficulty of regulating the use of household materials such as sodium bicarbonate for self-prescribed uses such as vaginal douching. The use of dilute solutions of this ingredient as a cleansing, refreshing, and soothing douche is considered to be cosmetic and, therefore, not under the purview of this Panel. (See part III. paragraph C.1. above—Drug vs. cosmetic status.)

References

(1) Harvey, S. C., "Gastric Antacids and Digestants," in "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, p. 966, 1975.

(2) Swinyard, E. A., "Gastrointestinal Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, p. 736, 1975.

(3) Glynn, R., "Daily Douching: Effect on Vaginal Mucosa" *Obstetrics and Gynecology*, 22:640–642, 1963.

(4) Glynn, R., "Vaginal pH and the Effect of Douching," *Obstetrics and Gynecology*, 20:369–372, 1962.

(6) *Sodium carbonate.* The Panel concludes that data are insufficient to prove that sodium carbonate is safe and effective for use in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* The Panel is unaware of any data which prove that sodium carbonate is safe for vaginal use. Concentrated sodium carbonate is highly corrosive; its LD_{50} in rats is 4000 mg/kg (Ref. 1). Sodium carbonate is used in some antacid preparations.

(ii) *Effectiveness.* Sodium carbonate is a potent alkalinizing agent. (Ref. 2). The only dosage form containing this ingredient reviewed by the Panel was a vaginal douche. However, the panel is unaware of any data which demonstrate that sodium carbonate is effective in altering the vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(iii) *Dosage and directions.* The Panel recommends that sodium carbonate be used as a douche at a concentration of 1 tablespoonful per liter of water.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c. above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that sodium carbonate be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.c. below—Altering vaginal pH so as to encourage the growth of normal vaginal flora.)

The Panel also recommends that sodium carbonate be subjected to the studies outlined in the testing guidelines discussed in the first portion of the Panel's review of OTC vaginal contraceptives. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

References

(1) "Registry of Toxic Effects of Chemical Substances," Department of Health, Education, and Welfare, Washington, D.C., p. 1062, 1975.

(2) Swinyard, E. A., "Pharmaceutical Necessities," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, pp. 1265–1266, 1975.

(7) *Tartaric acid.* The Panel concludes that tartaric acid is safe when used in vaginal douches, but that data are insufficient to prove that it is effective in altering vaginal pH for a sufficient length of time to encourage the growth of normal vaginal flora.

(i) *Safety.* Tartaric acid is a fruit acid which is a byproduct of the fermentation process used in the wine industry. It has been used extensively in the soft drink industry, and the sodium salt has been used as a laxative. Strong solutions of tartaric acid are only mildly irritating (Ref. 1), but 30 g ingested orally can cause adverse gastrointestinal symptoms and circulatory disturbances (Ref. 2). The Panel considers tartaric acid to be safe at the low concentrations (0.047 percent) used in vaginal drug products.

(ii) *Effectiveness.* Tartaric acid is a weak acid, and as such is used as a buffer to maintain the acid pH of a douche solution. The only dosage form containing this ingredient reviewed by the Panel was a vaginal douche. However, no data were presented to the Panel which demonstrate the extent to which vaginal pH is altered by tartaric acid or prove that such an action lasts long enough to encourage the growth of normal vaginal flora.

(iii) *Dosage and directions.* The Panel recommends that tartaric acid be used as a douche in a concentration of 0.047 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which alter vaginal pH. (See part IV. paragraph A.2.c.(2) above—Ingredients which alter vaginal pH so as to encourage the growth of normal vaginal flora.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that tartaric acid be subjected to the studies outlined in testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.c. below—Altering vaginal pH so as to encourage the growth of normal vaginal flora.)

References

(1) "The Merck Index," 9th Ed., Merck and Company, Inc., Rahway, NJ, p. 1174, 1976.

(2) Arena, J. M., "Toxicology—Symptoms—Treatment," *in* "Poisoning" 2d Ed., C. C. Thomas Publishers, Springfield, IL, p. 496, 1970.

c. *Ingredients which produce an astringent effect.*

Alum compounds (alum ammonium or potassium aluminum sulfate)
Boron compounds (boric acid, boroglycerine, sodium borate, sodium perborate—all at concentration greater than preservative levels (1 percent boron))
Zinc Sulfate

(1) *Alum compounds (alum ammonium or potassium aluminum sulfate).* The Panel concludes that alum compounds are safe in the concentrations present in the products submitted for review (0.037 to 0.06 percent), but that data are insufficient to prove that they are effective as astringents in the vagina at this concentration range. In concentrations known to produce an astringent action (0.5 to 5 percent), these ingredients are of unproven safety.

(i) *Safety.* Alum compounds have had a long history of medical use as douche ingredients and also enjoy widespread use in veterinary medicine as an astringent, antiseptic, and antimycotic (Ref. 1). Alum has a toxicity rating of two, which means that the probable lethal human dosage is from 5 to 15 g/kg of body weight. Large doses ingested orally may burn the mouth and pharynx (Ref. 2).

The Panel believes that alum compounds are safe for use in the vagina in a concentration of 0.037 and 0.06 percent; however, at generally recognized astringent concentrations of 0.5 to 5 percent, there are insufficient data to determine their safety when used in the vagina. Therefore, the Panel recommends that safety testing be done if these higher levels are to be used for producing an astringent effect in the vagina.

(ii) *Effectiveness.* The alum compounds are powerful astringents in acidic solution (pH of 6) and have very low antiseptic properties. The only dosage form containing these ingredients reviewed by the Panel was a vaginal douche. However, there are insufficient data to demonstrate the effectiveness of alum compounds as astringents when used in the vagina at the concentration levels in the vaginal drug products submitted for review. Therefore, the Panel recommends that testing be done on the currently marketed concentrations in order to substantiate the claim of astringency.

(iii) *Dosage and directions.* The Panel recommends that the alum compounds be used as a douche in a concentration range of 0.037 to 0.06 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which produce an astringent effect. (See part IV. paragraph A.2.c.(3) above—Ingredients which produce an astringent effect.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel's recommendation for the testing of alum compounds is in two parts:

(*a*) If the alum compounds are to be used in the dosage concentration range (0.037 to 0.06 percent) currently marketed, the Panel recommends that they be subjected to the studies outlined in the testing guidelines in order to prove their effectiveness. (See part IV. paragraph F.1.d. below—Producing an astringent effect.)

(*b*) If the alum compounds are to be used in the dosage range (0.5 to 5 percent) generally recognized as having an astringent action, the Panel recommends that they be subjected to the studies outlined in the safety testing guidelines discussed in the first portion of the Panel's review of OTC vaginal conrtraceptives. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

References

(1) Rossoff, I.S., "Handbook of Veterinary Drugs," Springer Publishing Co., New York, pp. 10–11, 1974.

(2) Gosselin, R. E. et al., "Clinical Toxicology of Commercial Products, Acute Poisoning," 4th Ed., The Williams and Wilkins Co., Baltimore, MD, P. 89, 1976.

(2) *Boron compounds (boric acid, boroglycerine, sodium borate, and sodium perborate—all at concentrations greater than preservative levels (1 percent boron)).* The Panel concludes that there are insufficient data to prove that boron compounds are safe and effective for use as astringents in the vagina. The Panel's review of the safety and effectiveness of boron compounds above includes reference to their use as an astringent in the vagina. (See part IV. paragraph C.1.a.(4) above.)

(3) *Zinc sulfate.* The Panel concludes that zinc sulfate is safe in the concentration (0.02 percent) present in the products submitted for review, but that data are insufficient to prove that it is effective as an astringent in the vagina at this concentration. In concentrations (0.2 to 1.0 percent) known to produce an astringent action, this ingredient is of unproven safety.

(i) *Safety.* Zinc sulfate is an astringent and weak antiseptic which dissolves in water to form an acidic solution (pH 4.5) (Ref. 1). Because of these properties, it has been used in ophthalmic preparations for many years. Zinc sulfate is also a recognized ingredient of astringent lotions (at 0.2 to 1.0 percent concentrations) used in the treatment of acne, impetigo, and poison ivy (Ref. 1). Veterinarians administer doses of 300 to 2000 mg of zinc sulfate to dogs as an emetic. Doses of 660 mg have been administered orally to humans in order to heal wounds (Ref. 2 and 3).

The Panel concludes that zinc sulfate is safe for use in the vagina in a concentration of 0.02 percent; however, there are insufficient data to determine the safety of this ingredient when used in the vagina in generally recognized astringent concentrations of 0.2 to 1.0 percent (Ref. 1). The Panel recommends that safety testing be done if these higher levels are to be used for producing an astringent effect in the vagina.

(ii) *Effectiveness.* The only dosage form containing zinc sulfate reviewed by the Panel was a vaginal douche. Although zinc sulfate is generally recognized as an astringent (Ref. 4), there are insufficient data to prove its effectiveness as an astringent for use in the vagina in the concentration in the product submitted for review. Therefore, the Panel recommends that testing be done on the currently marketed concentration in order to substantiate the claim of astringency.

(iii) *Dosage and directions.* The Panel recommends that zinc sulfate be used as a vaginal douche in a concentration of 0.02 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for ingredients which produce an astringent effect. (See part IV. paragraph A.2.c.(3) above—Ingredients which produce an astringent effect.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.3.a. above—Package inserts for vaginal douches, and part IV. paragraph A.3.b. above—Principal display panel.)

(v) *Evaluation.* The Panel's recommendation for the testing of zinc sulfate is in two parts:

(*a*) If zinc sulfate is to be used in the 0.02 percent concentration currently marketed, the Panel recommends that it be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV. paragraph F.1.d. below—Producing an astringent effect.)

(*b*) If zinc sulfate is to be used in the 0.2 to 1.0 percent concentration range, the Panel recommends that it be subjected to the studies outlined in the safety testing guidelines reported in the first portion of the Panel's review of OTC vaginal contraceptives. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

References

(1) Harvey, S. C., "Antimicrobial Drugs," *in* "Remington's Pharmaceutical Sciences," 15th Ed., edited by A. Osol et al., Mack Publishing Co., Easton, PA, pp. 1101–1102, 1975.

(2) O'Riain, S., H. J. Copenhagen, and J. S. Calnan, "The Effect of Zinc Sulphate on the Healing of Incised Wounds in Rats," *British Journal of Plastic Surgery*, 21:240–243, 1967.

(3) Husain, S. L., "Oral Zinc Sulphate in Leg Ulcers," *Lancet*, 1:1069–1071, 1969.

(4) OTC Volume 110022.

d. *Ingredients which lower surface tension or which produce a mucolytic or proteolytic effect.*

Alkyl aryl sulfonate
Boron compounds (boric acid, boroglycerine, sodium borate, and sodium perborate—all at concentrations greater than preservative levels (1 percent boron)).
Lactic acid
Papain

(1) *Alkyl aryl sulfonate.* The Panel concludes that alkyl aryl sulfonate is safe at the dosage concentration presently used in vaginal drug products, but that data are insufficient to prove that it is effective as a mucolytic agent under conditions of actual vaginal use.

(i) *Safety.* Alkyl arly sulfonate has been widely used as a dispersing agent in insecticides and dust sprays; it is also used commercially to remove insecticide residues from fruit (Ref. 1). There have been no reports of human toxicity attributed to the use of this ingredient even though there has probably been significant human ingestion. Several long-term animal experiments using alkyl aryl sulfonate (including reproduction studies) have revealed no evidence of toxicity (Refs. 2 and 3).

(ii) *Effectiveness.* Alkyl aryl sulfonate is generally recognized as an anionic surfactant, a wetting agent (Ref. 4). The only dosage form containing this ingredient reviewed by the panel was a vaginal douche. No studies were submitted to establish its effectiveness; therefore, the Panel recommends that this ingredient be subjected to testing in order to prove its effectiveness as a mucolytic ingredient in vaginal douches.

(iii) *Dosage and directions.* The Panel recommends that alkyl aryl sulfonate be used as a douche in a concentration of 0.1 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for mucolytic ingredients. (See part IV. paragraph A.2.c.(4) above—Ingredients which lower surface tension and produce a

mucolytic effect.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.) In addition, the Panel recommends that the following warning be included in the labeling of vaginal products containing alkyl aryl sulfonate: "Avoid contact with the eyes."

(v) *Evaluation.* The Panel recommends that alky aryl sulfonate be subjected to the studies outlined in the testing guidelines to prove its effectiveness. (See part IV. paragraph F.1.f. below—Producing mucolytic or proteolytic effects.)

References

(1) Gosselin, R. E. et al., "Clinical Toxicology of Commercial Products. Acute Poisoning," 4th Ed., The Williams and Wilkins Co., Baltimore, MD, p. 177, 1976.

(2) Paynter, O. E., and R. J. Weir, Jr., "Chronic Toxicity of Santomerase Number 3 from Olefin (Dodecyl Benzene Sodium Sulfonate)," *Toxicology and Applied Pharmacology*, 2:641–648, 1960.

(3) Tusing, T. W., O. E. Paynter, and D. L. Opdyke, "The Chronic Toxicity of Sodium Alkylbenzenesulfonate by Food and Water Administration to Rats," *Toxicology and Applied Pharmacology*, 2:464–473, 1960.

(4) Gleason, M. N. et al., "Clinical Toxicology of Commercial Products. Acute Poisoning," 3d Ed., The Williams and Wilkins Co., Baltimore, MD, p. 10, 1969.

(2) *Boron compounds (boric acid, boroglycerine, sodium borate, and sodium perborate—all at concentrations greater than preservative levels (1 percent boron)).* The Panel concludes that data are insufficient to prove that boron compounds are safe and effective for use as a mucolytic or proteolytic agent under conditions of actual vaginal use. The Panel's review of the safety and effectiveness of boron compounds above includes reference to their use as agents to lower surface tension or to produce a mucolytic or proteolytic effect. (See part IV. paragraph C.1.a.(4) above.)

(3) *Lactic acid.* The Panel concludes that lactic acid is safe in the amounts used in vaginal douches, but that data are insufficient to prove that it is effective as a mucolytic agent under conditions of actual vaginal use.

(i) *Safety.* The Panel concludes that lactic acid is safe for use as a mucolytic agent in vaginal drug products when used within the dosage limit set forth below.

The Panel has discussed the safety of lactic acid above. (See part IV. paragraph C.1.b.(4)(i) above—Safety.)

(ii) *Effectiveness.* The only dosage form containing this ingredient reviewed by the Panel was a vaginal douche (Ref. 1). The Panel believes that lactic acid may have mucolytic properties that would substantiate its usefulness in a vaginal douche; however, no data proving such an action have been presented.

(iii) *Dosage and directions.* The Panel recommends that lactic acid be used as a douche in a concentration range of 0.04 to 1.3 percent. If applicable, the Panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The Panel recommends Category I labeling for mucoltic ingredients. (See part IV. paragraph A.2.c.(4) above—Ingredients which lower surface tension and produce a mucolytic effect.) The Panel also recommends Category I labeling for vaginal douches. (See part IV. paragraph A.2.a. above—Package inserts for vaginal douches, and part IV. paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that lactic acid be subjected to the studies outlined in the testing guidelines to prove its effectiveness. (See part IV. paragraph F.1.f. below—Producing mucolytic or proteolytic effects.)

Reference

(1) OTC Volume 110025.

(4) *Papain.* The Panel concludes that papain is safe in the doses generally used in vaginal douches, but that data are insufficient to prove that it is effective as a mucolytic or proteolytic agent under conditions of actual vaginal use.

(i) *Safety.* Papain has been used for many years in dermatologic preparations. The Panel is unaware of any adverse effects or evidence of sensitization resulting from the topical use of papain or of any problems arising from its use on open wounds. No specific animal or human toxicity studies were submitted to the Panel.

(ii) *Effectiveness.* Papain is a proteolytic agent that has been used for many years as a debriding agent in the treatment of wounds (Refs. 1, 2, and 3). Most of the documentation regarding the effectiveness of this ingredient comes from experience in dermatology and surgery, where its use has been widely accepted in the removal of scabs, pus, and decayed tissue. The only vaginal dosage form containing this ingredient reviewed by the Panel was a douche. No data were submitted to the Panel concerning the effectiveness of this enzyme in a vaginal douche.

(iii) *Dosage and directions.* The Panel recommends that papain be used as a douche in a concentration of 0.005 percent. If applicable, the panel recommends that the manufacturer provide the consumer with adequate directions stating how the product should be mixed to attain the proper concentration of the active ingredient.

(iv) *Labeling.* The panel recommends Category I labeling for mucolytic ingredients. (See part IV, paragraph A.2.c.(4) above—Ingredients which lower surface tension and produce a mucolytic effect. The Panel also recommends Category I labeling for vaginal douches. (See part IV, paragraph A.2.a. above—Package inserts for vaginal drug products, and part IV, paragraph A.2.b. above—Principal display panel.)

(v) *Evaluation.* The Panel recommends that papain be subjected to the studies outlined in the testing guidelines in order to prove its effectiveness. (See part IV, paragraph F.1.f. below—Producing mucolytic or proteolytic effects.)

References

(1) Sherry, S., and A. P. Fletcher, "Proteolytic Enzymes: A Therapeutic Evaluation," *Clinical Pharmacology and Therapeutics*, 1:202–226, 1960.

(2) Swinyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Co., New York, p. 958, 1975.

(3) "AMA Drug Evaluations—1977," 3d Ed., American Medical Association, Chicago, p. 1201, 1977.

2. *Category III labeling.* The Panel concludes that, while these terms may be amenable to proof by scientific methods, insufficient data were submitted to permit the Panel to reach a final conclusion as to their validity. Any manufacturer who wishes to make these claims must perform the necessary research to substantiate their validity and submit the results to FDA. The panel classifies the following terms in Category III.

a. Mucolytic

b. Proteolytic

D. *Inactive Ingredients—Comments on Safety.*

Even though the OTC drug review is primarily an evaluation of the safety, effectiveness, and labeling of "active" therapeutic ingredients, the Panel decided to comment on the safety of certain "inactive" ingredients which are contained in vaginal drug products. Accordingly, the Panel recommends that particulate materials, such as silica and talc, which ordinarily are regarded as inactive ingredients, be excluded from

vaginal products. The Panel makes this recommendation because it believes that particulate material is potentially hazardous, especially if it is not readily biodegradable, and is also dense, abrasive, or irritating to tissues.

1. *Silica (fine).* Silica (fine) is silicon dioxide, an insoluble, dense, hard, and abrasive material (Ref. 1). It is incorporated into certain douche powders for use as a flow promoter in the manufacturing process to facilitate product packaging.

Because silica (fine) does not contribute to the effects of a vaginal douche, the Panel has concluded that it can be considered an inactive ingredient. The Panel, however, is very concerned about the presence of particulate material in a vaginal douche, especially material having and abrasive nature. The introduction of silica (fine) into a soft tissue area such as the vagina is potentially hazardous. The Panel believes that it would be in the best interest of the consumer for manufacturers to remove such an inactive ingredient from any manufacturing process, thereby eliminating it from the final product formulation.

2. *Talc* Although talc is not an ingredient contained in any of the vaginal drug products reviewed by this Panel, a submission was made which suggested that there would be concern about the safety of talc if it were applied intravaginally (Ref. 2). This ingredient has been the subject of intense review by the Advisory Review Panel on OTC Antiperspirant Drug Products (43 FR 46694). In the course of that Panel's review, data were presented to show that there is considerable variation in the purity of various commercial talcs. For example, some contain contaminants of asbestos, a known lung carcinogen (Ref. 3 and 4). Other evidence showed that certain ovarian and cervical tumors were found to contain particles of talc. This suggests that talc itself may be a carcinogen (Ref. 3). Therefore, this Panel concludes that FDA should closely regulate any drugs or devices intended for use in the vagina to insure that only pure, cosmetic talc is used in any of these products.

3. *Camphor.* The Panel concludes that camphor is ineffective as an antibacterial ingredient at the low concentration present in vaginal douches and that at antimicrobial levels it would be unsafe for OTC or any use.

Camphor is an aromatic and soothing agent that has been used for many years in many forms. It is well recognized as a class five toxin (Ref. 5) when ingested (probable lethal human dose is 50 to 500 mg/kg of body weight), but few studies have focused on its effects when absorbed through skin or mucous membranes. Camphor has been used in mothballs, chest rubs for colds, and liniment. It is present in one vaginal douche product in a unit dose of 0.03 mg and at a level of 0.05 percent in the package; but there is very little information on its use or effectiveness in a vaginal douche. Presumably, it is present because of its aromatic and soothing effects.

a. *Safety.* When ingested or absorbed by humans, camphor has been known to cause vertigo, mental confusion, delirium, convulsions, coma, vomiting, respiratory failure, and even death (Ref. 6). A review of the current literature indicates that camphor is highly toxic when swallowed in the form of camphorated oil. In one case reviewed by the Panel, camphorated oil was mistakenly taken in place of castor oil to induce labor (Ref. 6). The patient collapsed almost immediately after ingesting 12 g of camphor and was lavaged 30 minutes later with apparent recovery. No camphor was present in the mother's blood sample 8 hours later; at 36 hours after ingestion the child was delivered. The infant has a pulse of 80 beats per minute, no respiration, poor muscle tone, and cyanotic extremities. Attempts at resusciation failed to establish breathing and the child was pronounced dead 30 minutes after delivery. At the autopsy, camphor in significant amounts was found in all organs, and there was evidence of diffuse neuronal necrosis throughout the brain. Camphor was also found in the amniotic fluid and the cord blood. The apparent explanation is that camphor is conjugated in the mature liver to a metabolically incactive form and excreted through the urine, presumably protecting the mother but allowing a buildup in the amniotic fluid from which it may be reabsorbed and concentrated in fetal tissue.

b. *Effectiveness.* The Panel concludes that camphor is not effective for treating any vaginal conditions which are amenable to self-diagnosis and self-treatment, e.g., relieving minor irritations of the vagina, decreasing pathogenic microorganisms, altering vaginal pH so as to encourage the growth of normal vaginal flora, or producing an astringent or mucolytic effect. As stated above, it is probably present in vaginal drug products because of its aromatic, sooting action.

Although there are limited data available concerning the antimicrobial effectiveness of camphor in vaginal douches, the Panel believes, on the basis of the reported toxicity of camphor, that doses high enough to be antimicrobial in OTC vaginal douche preparations would not be safe.

c. *Evaluation.* Because nothing is known concerning the capacity of the fetal tissues to handle this very toxic substance, and because it appears to have no effective function in vaginal drug products, the Panel recommends that camphor be removed from all such drug products.

References

(1) Merck Index, 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 1099, 1976.

(2) OTC Volume 110001.

(3) Blejer, H. P., and R. Arlon, "Talc: A Possible Occupational and Environmental Carcinogen," *Journal of Occupational Medicine*, 15:92–97, 1973.

(4) Henderson, W. J. et al., "Talc and Carcinoma of the Ovary and Cervix," *Journal of Obstetrics and Gynaecology of the British Commonwealth*, 78:266–272, 1971.

(5) Gleason, M. N. et al., "Clinical Toxicology of Commercial Products. Acute Poisoning." 3d Ed., Williams and Wilkins Co., Baltimore, MD, p. 30, 1969.

(6) Riggs, J. et al., "Camphorated Oil Intoxication in Pregnancy: Report of a Case, "*Obstetrics and Gynecology*, 25:255–258, 1965.

E. Testing Guidelines for Safety of Vaginal Drug Products.

Saftey testing guidelines for all vaginally applied ingredients are discussed in the first portion of the Panel's review of OTC vaginal contraceptives. (See part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).) The Panel believes that because all of the ingredients under its review are applied to the vagina, the guidelines for safety testing are identical no matter what the ingreidents or the drug's intended pharmacological purpose.

F. Testing Guidelines for Effectiveness of Vaginal Drug Products.

1. *Vaginal douches.* The ultimate test of the effectiveness of a vaginal douche preparation is a clinical trial simulating condition of actual use. Effectiveness testing is required for those ingredients in vaginal douches that make the following drug claims: Relieving minor irritations of the vagina, decreasing the number of pathogenic microorganisms (professional labeling claim only), altering vaginal pH so as to encourage the growth of normal vaginal flora, producing an astringent effect, lowering surface tension, and producing a mucolytic or proteolytic effect. As mentioned earlier in this document, the Panel does not require effectiveness testing for douches which only make cosmetic cliams, e.g., "cleansing," because cosmetic claims are not within the purview of the Panel. The Panel

recommends that the following general testing guidelines be used to substantiate the corresponding claims.

a. *Relieving minor irritations of the vagina.* The Panel recognizes that douche products have been and will continue to be used by consumers to alleviate symptoms of vaginal irritations such as itching and burning. Therefore, in order to claim effectiveness for relief of these symptoms for any ingredient contained in a douche product, it will be necessary to carry out clinical studies to prove the validity of such a claim. Proof of effectiveness will consist of evidence (both subjective and objective) that the product relieves vaginal irritation: such evidence should be statistically significant when compared with appropriate controls. While allowing that such a claim is appropriate for an OTC drug product, the Panel concludes that the labeling should clearly state that if symptoms are not relieved after 1 week of use, professional consultation should be obtained. (See part IV. paragraph A.2. above—Category I labeling.)

b. *Decreasing the number of pathogenic microorganisms (restricted to professional labeling claims).* The Panel recognizes that douching may temporarily reduce the number of bacterial, parasitic, fungal, and viral microorganisms which may be present in the vagina. However, it is the Panel's opinion that women in general are unable to self-diagnose and self-treat vaginal infections and that professional consultation is essential for the proper treatment of these conditions. Therefore, the Panel is recommending that such claims be restricted to professional labeling.

The Panel is aware that certain ingredients under review have been shown to be anti-infective agents and, therefore, are being prescribed by physicians for the treatment of vaginal infections. In the event that such claims are made for these agents in professional labeling, the appropriate testing for safety and effectiveness (as described above under the evaluations of specific ingredients) should be required. In order to make therapeutic claims in professional labeling, a vaginal douche must be evaluated by in vitro and human testing. For example, an antimicrobial effect could be assessed by demonstrated clinical remission of the disease process.

c. *Altering vaginal pH so as to encourage the growth of normal vaginal flora.* The Panel recognizes that numerous claims have been made for the action of douches in lowering the vaginal pH so as to encourage the growth of normal vaginal flora. However, the evidence to date suggests that the pH changes induced by douching are transitory and, therefore, must be considered to be of little clinical significance. Nevertheless, if such a claim is to be made, appropriate testing for safety and effectiveness must be carried out. (See evaluations of specific ingredients above.)

The vaginal pH should be measured before and after douching. Direct measurement with a pH meter can be made by placing a pH glass electrode in the vagina without speculum separation of the vaginal walls (Ref. 1). Electrodes for this special purpose are commercially available. In addition, the pH of the douche solution itself must, of course, be measured.

The extent to which altering vaginal pH encourages the growth of normal flora can be ascertained by using various microbiological analyses (smears and cultures) to identify the exact microorganisms present in the vagina during times of varying pH.

d. *Producing an astringent effect.* Astringents are locally acting drugs that precipitate proteins but have so little penetration that they only affect the surface of cells. Consequently, the permeability of the cell membrane is reduced but the cell itself remains viable (Ref. 2). Astringents cause actual constrictions of the mucous membranes. The end result of astringent action is a reduction in local edema, inflammation, and exudation (Ref. 3). The irritation provoked by astringents shows that they may produce tissue damage; however, the injury is usually brief and easily repaired (Ref. 4).

Because astringent action depends on precipitation of proteins, this effect may be tested directly or by measuring certain biological effects such as diminished flexibility of tissues (Ref. 4). Appropriate histological tests for determining transient and possibly permanent effects of astringent douche ingredients on animal and human vaginal and cervical mucosa need to be performed. (See the first portion of the Panel's review of OTC vaginal contraceptives, part II. paragraph D.—Drug Evaluation for Safety (45 FR 82020).)

e. *Lowering surface tension.* The term "surfactant" is a convenient contraction of the term "surface active agent." The best known and oldest of the surface active agents is soap. The newer synthetic surfactants are most often referred to as detergents or wetting agents. Surfactants cause a lowering in surface tension. Although low surface tension does not guarantee good detergency, most good detergents do show low surface tension values (Ref. 5).

The surface activity of an ingredient may be easily evaluated by determining its surface tension and comparing this value with that of a standard solution of a reference detergent such as sodium oleate or sodium lauryl sulfate. Of the various devices which may be used to determine surface tensions, the most frequently used are the capillary tube, the stalagmometer, and the tensionmeter. For making such determinations, the tensionmeter, using the ring method, is the most widely used in industrial laboratories, with the Du Nouy form of this tensionmeter being favored (Ref. 5). This device measures the force necessary to pull a ring of known diameter, usually made of platinum, away from the surface of a liquid. It uses a torsion wire to measure the force of detachment and is calibrated by using a liquid of known surface tension and adjusting the indicator to show the correct reading at the point of detachment.

f. *Producing mucolytic or proteolytic effects.* One reason for using a douche with mucolytic or proteolytic properties is to remove cervical and vaginal mucus. Mucolytic properties of a douche may be readily ascertained by in vitro tests on bovine cervical mucus or human cervical mucus obtained at various phases of the menstrual cycle. Alterations in the rheological properties of cervical mucus such as viscosity, flow elasticity, spinnbarkeit, thixotropy, and lack of stickiness may serve as an index of mucolytic action. Alterations in the biological properties of cervical mucus following in vitro exposure to a douche, particularly sperm receptivity and penetrability, may also be observed. Procedures for studying the rheological and biological properties of cervical mucus may be found in the original literature (Ref. 6 and 7).

References

(1) Masters, W. H., "The Sexual Response Cycle of the Human Female: Vaginal Lubrication," *Annals of the New York Academy of Sciences*, 83:301–317, 1959.

(2) Swinyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, The MacMillan Company, New York, p. 951, 1975.

(3) Osol, A., "Remington's Pharmaceutical Sciences," 15th Ed., Mack Publishing Co., Easton, PA., pp. 716–717, 1975.

(4) Sollmann, T., "A Manual of Pharmacology," 6th Ed., W. B. Saunders Co., Philadelphia, pp. 148–150, 1942.

(5) Schwartz, A. M., and J. W. Perry, "Surface Active Agents," Interscience Publishers, Inc., New York, pp 263–271, 1949.

(6) Hafez, E. S. E., "Gamete Transport," *in* "Human Reproductioin," edited by E. S. E.

Hafez and T. N. Evans, Harper and Row, New York, pp. 85–118, 1973.

(7) Moghissi, K. S., "The Effect of Steroidal Contraceptives on the Reproductive System," *in* "Human Reproduction," edited by E. S. E. Hafez and T. N. Evans, Harper and Row, New York, pp. 559–587, 1973.

2. *Vaginal suppositories.* Vaginal suppositories are used for one or more of the following purposes: (a) Producing soothing and refreshing effects, (b) deodorizing, (c) relieving minor irritations of the vagina, (d) reducing the number of pathogenic microorganisms, (e) altering the pH of the vagina so as to encourage the growth of normal vaginal flora, and (f) producing an astringent effect.

The Panel does not require effectiveness testing for suppositories which only make the cosmetic claims noted in (a) and (b) above because such claims as not within the purview of the Panel. The Panel, however, does require substantiation of claims (c) through (f) and has discussed testing guidelines for these types of claims earlier in this document. (See part IV. paragraph F.1. above—Vaginal douches.) These guidelines may be applied to vaginal suppositories as well as to vaginal douches.

G. Vaginal Douche Equipment.

1. *Geneal discussion.* The procedures for the review of OTC drugs published in the **Federal Register** of May 11, 1972, provide for the Panel's review of "any conditions relating to active ingredients, labeling indications, warnings and adequate directions for use, prescription or OTC status, and any other conditions necessary and appropriate for the safety and effectiveness of drugs covered by the monograph" (37 FR 9479). Because the effectivess and safety of douching depend on the ingredients, the method, and the equipment used, the Panel also evaluated douche equipment. The FDA Advisory Review Panel on Obstetrical and Gynecological Devices has not yet reviewed the equipment used for douching and has stated that it is most appropriate for this Panel to make its recommendations concerning this equipment at this time.

The Panel has serious concerns about any device which uses a nozzle with a single unshielded central opening. Direct application of such a nozzle into a patulous (expanded) cervix could allow the introduction of douche fluid or air into the uterus, fallopian tubes, and abdominal cavity. Introduction of douche fluid in this manner could subsequently result in chemical peritonitis and introduction of air could result in an air embolus. Accordingly, in the absence of more definitive data and because of the potential for producing problems, the Panel recommends that only nozzles with multiple openings be permitted. However, if a nozzle with a single opening is to be used, it must be shielded to deflect the douche-liquid stream. Furthermore, in order to minimize the danger of direct injury to the vaginal mucosa, the Panel believes that only blunt-ended nozzles should be permitted.

Some of the bulb-type syringes available to consumers are equipped with an occulsive shield that is designed to prevent the outflow of the douche liquid from the vagina. The Panel questions the safety of vaginal occlusion during douching because it believes that this practice potentially hazardous. Therefore, it recommends that occlusive shields not be allowed on douche devices.

2. *Evaluation of equipment currently available—a. Douche bag.* The currently available douche bags are of 1- and 2-quart volume. They are supplied with tubing and a clamp with a shutoff valve. Intravaginal pressure is exerted by gravity flow.

The douche bag apparatus contains a vaginal pipe or nozzle to be used for douching and, frequently, a rectal pipe or nozzle to be used for administering rectal enemas. The rectal pipe is shorter in length than the vaginal pipe and should not be used for douching because it has a single nonoccluded opening at the tip. For this reason, the Panel recommends that both nozzles be labeled as to their intended use ("For Rectal Enema" or "For Vaginal Douche") in order to avoid confusion and prevent possible adverse effects.

The Panel's specific recommendations regarding labeling for the safe use of douche bag equipment are presented earlier in this document. (See part IV. paragraph A.2.a.(1) above—Recommended methods for douching.)

b. *Bulb syringe.* The currently marketed bulb syringes have a volume range of 8 to 16 ounces. The vaginal pipe is attached directly to the bulb, and pressure is exerted by hand. The Panel's specific recommendations regarding labeling for the safe use of the bulb syringe are presented earlier in this document. (See part IV. paragraph A.2.a.(1) above—Recommended methods for douching.)

c. *Prepackaged disposable units.* The currently marketed prepackaged disposable units have a volume range of 3 to 9 ounces. The vaginal pipe is attached directly to the disposable container, and pressure is exerted by hand. The Panel's specific recommendations regarding labeling for the safe use of prepackaged disposable units are presented earlier in this document. (See part IV. paragraph A.2.a.(1) above—Recommended methods for douching.)

3. *Intravaginal pressure.* During its review of submitted material and subsequent literature search, the Panel became concerned about the lack of precise data concerning the intravaginal pressures which are produced during douching. There appeared to be no reliable information available regarding the amount of pressure which can be generated by the various disposable and reusable douche products currently on the market. The Panel was unable to determine whether or not douching might be hazardous for women, as has been suggested, and also whether one type of douching apparatus might be more dangerous than another. The Panel was also interested in knowing whether or not the method of douching (occluded vs. unoccluded) and the position during douching (erect or supine) made any significant difference in the intravaginal and intracervical pressures which could be generated by the various types of douching apparatus.

The Panel urged that industry undertake a study which might help in answering certain of the questions posed above. Such a study was subsequently conducted by a contract research consultant firm (Ref. 1). There were two major variables in the study design: The douching equipment itself and the women who used it. A douche bag (gravity flow), a bulb syringe (manual pressure), and five different disposable products (manual pressure) containing between 3 and 14 ounces of fluid were used. Eighteen women were evaluated, ranging in age from 21 to 44 years and having 0 to 3 children. The mean age of the total group was 30.3 years, the mean age of those with children was 35.6 years, and those without children 23.7 years. Seven of the women douched regularly and 11 did not. Each of the women used each of the douching techniques as assigned randomly on each day of testing.

The stated objective of the study was "to compare the intravaginal pressure produced by a douche bag used in a standard manner to that produced by the bulb syringe and by disposable douche products during both occlusive and nonocclusive douching." Prior to douching, a sterile tube was placed, always by the same gynecologist, along the posterior wall of the vagina with the open end opposite the cervical opening. All subjects douched in the sitting position, and the instructions provided with the products and apparatus were followed in all instances. Pressures were

measured using a transducer, and permanent records were made with a strip-chart recorder.

Following completion of the study, a number of generalization could be made regarding pressure induced by douching: (a) Vaginal pressures were lower in women who had borne children. The differences in peak pressure values ranged from 1.8 millimeters (mm) of mercury to 6.5 mm of mercury with nonocclusive douching and from 3.5 mm of mercury to 11.7 mm of mercury with occlusive douching. This variation was believed to be due either to increased age or to greater vaginal elasticity following childbirth. (b) Higher pressures were observed in those who did not douche than in those who regularly douched. The reasons for this were unclear. The differences in mean peak pressures varied from 0.4 mm of mercury to 4.8 mm of mercury. (c) Peak intravaginal pressures were essentially the same for the douche bag and disposal products, using both occlusive and nonocclusive techniques. During nonocclusive douching with the douche bag, the mean pressure was 15.0 mm of mercury; and, disposable douches ranged from 6.7 mm of mercury to 20.1 mm of mercury with a mean peak of 14.2 mm of mercury. The median peak pressures were essentially the same. During occlusive douching, these values ranged 12.6 mm of mercury to 21.3 mm of mercury. (d) The total time taken and the pressures generated by douching varied directly with the volume of the solution employed. Douching time was 5.2 minutes with the douche bag and 1.5 minutes with the 3-ounce disposable product. Peak pressure with high volume douches (6 ounces or less) averaged 10.7 mm of mercury. (e) Occlusive techniques appeared to produce higher pressures than nonocclusive ones; but, with one single and minor exception, the variations were quite small, averaging 4.0 mm of mercury.

These data were of great help to the Panel as it formulated its guidelines for labeling. However, two issues are still unresolved: First, a quantification of the pressures which are generated by douching in the reclining position; and second, a determination of the amount of pressure which is transmitted into the endocervical canal and possibly the uterine cavity and fallopian tubes. In the latter issue, while such information would be of interest and importance, the Panel recognized the difficult technical and ethical considerations which would be involved in carrying out a study designed to answer this question.

4. *Volume of douche fluid.* The Panel recognizes that vaginal douching has been performed with volumes of fluid ranging from approximately 250 to 2,000 mL, with the usual amount being about 1,000 mL. The recent advent of disposable douches, which deliver a volume of 90 to 180 mL of solution, has raised the question of the effectiveness of these smaller volumes of fluid in carrying out the intended functions of a vaginal douche.

In a review of the literature, the Panel was able to find only one unpublished study on the comparative effectiveness of high and low volume douches in removing cellular material from the vagina. The results of this study were open to various interpretations. In the absence of further scientific information relative to douche volume, the Panel has decided that, for cosmetic uses, volume of the douche is not a consideration. However, if there are any therapeutic claims made for the douche, the manufacturer must prove that the volume of the douche product is adequate to achieve the claimed effect.

5. *Labeling of douche equipment.* The Panel recommends that instructions for douching and accompanying warnings be included with all douche equipment. (See part III. paragraph A.3. above—Category I labeling.)

Reference

(1) OTC Volume 110038.

List of Subjects in 21 CFR Part 351

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), the agency advises in this advance notice of proposed rulemaking that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations would be amended by adding in Part 351, new Subpart B, to read as follows:

PART 351—VAGINAL CONTRACEPTIVE AND OTHER VAGINAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

* * * * *

Subpart B—Vaginal Drug Products

Sec.

Subpart B—Vaginal Drug Products

Authority: Sec. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

§ 351.101 Scope.

(a) An over-the-counter vaginal drug product in a form suitable for vaginal administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 351.103 Definitions.

As used in this subpart:

(a) *Vaginal douche.* A vaginal douche is a liquid preparation used to irrigate the vagina over an indeterminant period for one or more of the following purposes: cleansing, producing soothing and refreshing effects, deodorizing, relieving minor irritations, reducing the number of pathogenic microorganisms, altering the pH so as to encourage the growth of normal vaginal flora, producing an astringent effect, lowering surface tension, producing a mucolytic effect, or producing a proteolytic effect.

(b) *Vaginal suppository.* A vaginal suppository is a small globular mass, designed for easy introduction into the vagina. It is usually made of two major components—a vehicle and one or more chemical agents. It is solid at room temperature and either liquifies at body temperature or dissolves in vaginal fluids. Vaginal suppositories are

designed to be used for one or more of the following purposes: producing soothing and refreshing effects, deodorizing, relieving minor irritation, reducing the number of pathogenic microorganisms, altering the pH so as to encourage the growth of normal vaginal flora, or producing an astringent effect.

§ 351.110 Active ingredients for the relief of minor irritations of the vagina.

The active ingredients of the product consist of any of the following when used within the concentrations and dosage forms established for each ingredient.

(a) Propionates:

(1) Calcium propionate, 20 percent gel.

(2) Sodium propionate, 20 percent gel.

(b) Potassium sorbate, 1 to 3 percent douche.

(c) Povidone-iodine, .15 to .30 percent douche.

§ 351.111 Active ingredients which lower surface tension and which produce a mucolytic or proteolytic effect.

The active ingredients of the product consist of any of the following when used within the concentrations and dosage forms established for each ingredient.

(a) Dioctyl sodium sulfosuccinate, .002 percent douche.

(b) Nonoxynol 9, .0176 percent douche.

(c) Octoxynol 9, .088 percent douche.

(d) Sodium lauryl sulfate, .01 to .02 percent douche.

§ 351.112 Active ingredients which alter vaginal pH. [Reserved]

§ 351.113 Active ingredients which produce an astringent effect. [Reserved]

§ 351.120 Permitted combinations of active ingredients. [Reserved]

§ 351.150 Labeling definitions applicable to vaginal drug products.

(a) The following definitions draw distinctions between various parts of the labeling:

(1) According to the definition in section 201(m) of the Federal Food, Drug, and Costmetic Act (21 U.S.C. 321(m)) (the act), the term "labeling" means all labels and other written, printed, or graphic matter (e.g., package inserts) on or accompanying any article or any of its containers or wrappers.

(2) According to the definition in section 201(k) of the act, the term "label" specifically means that part of the labeling which appears on the immediate container of any article.

(3) According to the definition in § 201.60, the term "principal display panel" means that part of the label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(b) The distinctions in paragraph (a) of this section are pointed out because certain information is to be contained in specific locations within the labeling of vaginal drug products. Accordingly, the labeling of the product contains all the information required by §§ 351.152, 351.154, 351.156, and all applicable information required by §§ 351.158, 351.160, 351.162, and 351.164. The label of the product contains all the information required by §§ 351.152, 351.154, and all applicable information required by §§ 351.158, 351.160, 351.162, and 351.164. And the principal display panel of the product contains all the information required by § 351.152, and all applicable information required by §§ 351.158, 351.160, 351.162, and 351.164.

§ 351.152 Principal display panel.

(a) *Statetment of identity.* The principal display panel of the product identifies the product as a "vaginal douche," "vaginal douche concentrate," "vaginal gel," or "vaginal suppository," as appropriate.

(b) *Other information.* The principal display panel of the product contains the following additional information:

(1) "DOES NOT PREVENT PREGNANCY."

(2) "Keep this and all drugs out of the reach of children."

§ 351.154 Label.

(a) *Warnings.* The label of the product contains the following warning under the heading "Warnings." "Do not use during pregnancy except upon the advice and under the supervision of your physician."

(b) *Other required information.* The label of the product contains the following additional information: *For products identified as a vaginal douche or vaginal douche concentrate.* Adequate directions stating how the product should be mixed to obtain the proper concentration of active ingredient.

§ 351.156 Labeling.

(a) *Methods for douching.* The package insert or other labeling of a product which is identified as a vaginal douche or vaginal douche concentrate contains the following information, as applicable, under the heading "Methods for douching."

(1) Adequate directions stating how product should be mixed to attain the proper concentration of active ingredient and a statement indicating that such a product should be mixed immediately prior to use.

(2) Appropriate instructions relevant to the use of a douche in a sitting, standing, and reclining position.

(3) A statement indicating that a douche bag should not be suspended more than 3 feet (91 centimeters) above the vagina.

(4) A statement explaining that after a douche bag is filled and suspended, the clamp should be released prior to placing the nozzle into the vagina so that the solution will expel any air from the tubing.

(5) A statement pointing out that the lips of the vagina should not be pressed around the nozzle, and free outflow of the solution should be permitted.

(6) A statement noting that all douche equipment, especially the tubing, should be thoroughly rinsed and allowed to drain prior to storage.

(7) Instructions for the use of a bulk syringe which state that the bulb should be completely filled with solution (with the user being careful to expel any air) and only enough pressure should be exerted to cause the solution to flow gently into the vagina.

(8) Instructions for the use of a prepackaged disposable unit which state that the nozzle should be inserted gently into the vagina and only enough pressure should be exerted to cause the solution to flow gently into the vagina.

(b) *Warnings.* The package insert or other labeling of a product which is identified as a vaginal douche or vaginal douche concentrate contains the following information under the heading "Warnings":

(1) "Do not press the lips of the vagina around the nozzle. Overfilling the vagina may force fluid into the uterus (womb) and cause inflammation."

(2) "Douching does not prevent pregnancy."

(3) "If douching results in pain, soreness, itching, excessive dryness, or irritation, stop douching. If symptoms persist, consult a physician."

§ 351.158 Label of vaginal drug products containing active ingredients for the relief of minor irritations of the vagina.

(a) *Statement of identity.* The principal display panel contains the established name of the drug, if any, and identifies the product as a "Vaginal drug product—For minor irritations."

(b) *Indications.* The label of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) "For relief of minor vaginal irritation and itching."

(2) "For temporary relief of minor vaginal irritation and itching."

(3 "For relief of minor vaginal soreness."

(c) *Warnings.* The label of the product contains the following warning under the heading "Warnings":

(1) "If minor irritation has not improved after 1 week of use, consult your physician."

(2) *For products identified as a vaginal douche or vaginal douche concentrate:* "If symptoms continue or redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(d) *Directions.* The label of the product contains the following information under the heading "Directions", followed by "except under the advice and supervision of a physician."

(1) *For products containing calcium propionate or sodium propionate identified in § 351.110(a) (1) and (2).* "Apply to the vagina twice a day not to exceed 2.3 grams daily."

(2) *For products containing potassium sorbate identified in § 351.110(b).* "Use as a douche as needed."

(3) *For products containing providone-iodine identified in § 351.110(c).* "Use as a douche as needed."

§ 351.160 Label of vaginal drug products containing active ingredients which lower surface tension and which produce a mucolytic or proteolytic effect.

(a) *Statement of identity.* The principal display panel contains the established name of the drug, if any, and identifies the product as a "Vaginal drug product—For removing secretions."

(b) *Indications.* The label of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) "Removes vaginal discharge."

(2) "Removes vaginal secretions."

(3) "Mild detergent action."

(4) "Thins out vaginal mucus discharge."

(c) *Warnings.* The label of the product contains the following warnings under the heading "Warnings".

(1) *For products identified as a vaginal douche or vaginal douche concentrate.* "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(2) *For products identified as a vainal douche concentrate and containing dioctyl sodium sulfosuccinate identified in § 351.111(a) or sodium lauryl sulfate identified in § 351.111(d).* "Avoid prolonged contact with the skin and avoid contact with the eyes."

(d) *Directions.* The label of the product contains the following information under the heading "Directions," followed by "except under the advice and supervision of a physician."

(1) *For products containing dioctyl sodium sulfosuccinate identified in § 351.111(a).* "Use as a douche as needed."

(2) *For products containing nonoxynol 9 identified in § 351.111(b).* "Use as a douche as needed."

(3) *For products containing octoxynol 9 identified in § 351.111(c).* "Use as a douche as needed."

(4) *For products containing sodium lauryl sulfate identified in § 351.111(d).* "Use as a douche as needed."

§ 351.162 Label of vaginal drug products containing active ingredients which alter vaginal pH.

(a) *Statement of identity.* The principal display panel contains the established name of the drug, if any, and identifies the product as a "Vaginal drug product—For modifying vaginal pH."

(b) *Indications.* The label of the product contains a statement of the indications under the heading "Indications" that is limited to the following phrase. "Helps keep vagina in its normal acid state."

(c) *Warnings.* The label of the product contains the following warning under the heading "Warnings": *For products identified as a vaginal douche or vaginal douche concentrate.* "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(d) *Directions.* [Reserved]

§ 351.164 Label of vaginal drug products containing active ingredients which produce an astringent effect.

(a) *Statement of identity.* The principal display panel of the product contains the established name of the drug, if any, and identifies the product as a "vaginal drug product-Astringent."

(b) *Indications.* The label of the product contains a statement of the indications under the heading "Indications" that is limited to the following phrase: "Astringent."

(c) *Warnings.* The label of the product contains the following warning under the heading "Warnings": *For products identified as a vaginal douche or vaginal douche concentrate.* "If vaginal itching, redness, swelling, or pain develop, stop douching. Consult your physician if these symptoms persist."

(d) *Directions.* [Reserved]

§ 351.180 Professional labeling.

The labeling of the product provided to health professionals (but not to the general public) may contain the following additional indications:

(a) *For products containing calcium propionate or sodium propionate identified in § 351.110(a) (1) and (2).* "For the treatment of *Candida albicans.*"

(b) *For products containing providone-iodine identified in § 351.110(c).*

(1) "Microbiocidal douche."

(2) "Clinically effective in a program of treatment for vaginal moniliasis, T-vaginales vaginitis, and nonspecific vaginitis."

(3) "The use of providone-iodine as a douche may cause a transient rise of serum protein-bound iodine."

(4) The professional labeling should detail the therapeutic regimen used in the studies which resulted in clinical effectiveness.

(c) *For products containing dioctyl sodium sulfosuccinate identified in § 351.111(a) of sodium lauryl sulfate identified in § 351.111(d).* "For the treatment of *Trichomonas vaginalis.*"

Interested persons may, on or before January 11, 1984, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments on this advance notice of proposed rulemaking. These copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments replying to comments may also be submitted on or before March 19, 1984. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: September 21, 1983.

[FR Doc. 83-27596 Filed 10-7-83; 8:45 am]

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Vol. 48, No. 199

Thursday, October 13, 1983

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-4534
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235

United States Government Manual 523-5230

SERVICES

Agency services	523-5237
Automation	523-3408
Library	523-4986
Magnetic tapes of FR issues and CFR volumes (GPO)	275-2867
Public Inspection Desk	523-5215
Special Projects	523-4534
Subscription orders (GPO)	783-3238
Subscription problems (GPO)	275-3054
TTY for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
Ch. III.....45266
305.....45266

3 CFR

Executive Orders:
July 15, 1875
(Revoked in part by PLO 6479).....45559

Proclamations:
5110.....45219
5111.....45221
5112.....45371
5113.....45523
5114.....45753
5115.....46259

5 CFR

Ch. XIV.....45373
213.....46261
752.....45525
1255.....45373

7 CFR

2.....46261
51.....46487
301.....46262
752.....45526
906.....45374
908.....45526, 46488
910.....45374, 45755
919.....45374
929.....45374
981.....45374
991.....45374
1435.....45374
1901.....45532

Proposed Rules:
226.....45779
402.....46062
441.....45782
781.....46065
904.....45786
910.....45565
966.....46544
1065.....45117
1131.....46343

8 CFR

103.....45093
214.....45093
238.....45093
248.....45093

9 CFR

Proposed Rules:
92.....46355
317.....45118
319.....45118
350.....45755
362.....45755
381.....45118

10 CFR

2.....46489
50.....46489
55.....45223
71.....45381
761.....45746
710.....46499

Proposed Rules:
50.....45787

12 CFR

7.....46502
29.....45532
204.....46005, 46262
207.....45533
217.....45756, 46262
220.....45533
221.....45533
224.....45533
561.....45382
563.....45382
760.....46006

13 CFR

101.....45224
123.....45225
133.....46008

14 CFR

39.....45093, 45535, 46008, 46009, 46503
71.....45094, 45095, 45536, 45537, 46010, 46503
95.....46504
97.....45096
205.....46264
248.....46265
294.....46265
320.....45236
380.....46265
389.....45758

Proposed Rules:
Ch. I.....46358
21.....45214, 45565
25.....46218, 46250
29.....46250
39.....46070
61.....45214
65.....45214
71.....45118, 45566
107.....45214
109.....45214
121.....45214, 46218, 46250
135.....45214
145.....45214

16 CFR

453.....45537

Proposed Rules:
1212.....45405

1500.....45567
1513.....45567

17 CFR

145.....46010
146.....46010
147.....46010
229.....46012
230.....46012
231.....46012
239.....45386, 46012
240.....46012
241.....46012
270.....46012
274.....46012

Proposed Rules:

240.....45119

18 CFR

2.....46012
35.....46012
157.....46021
271.....45097, 46266–46268
274.....45097
282.....45758
385.....45388

Proposed Rules:

101.....46361
104.....46361
141.....46361
154.....46361
159.....46361
201.....46361
204.....46361
260.....46361
271.....46071
282.....45787
410.....45568

19 CFR

4.....46510
10.....46510
101.....45538
103.....45538
210.....45544

Proposed Rules:

101.....45409

20 CFR

404.....46142

Proposed Rules:

422.....46072

21 CFR

81.....45237, 45760, 46022
109.....45544
131.....45545
179.....46022
193.....45547
430.....46270
436.....46270
442.....46270
522.....46023
540.....45760
558.....45102, 46023, 46024, 46514, 46515
1308.....46516

Proposed Rules:

182.....45121
184.....45121
351.....46694

23 CFR

Proposed Rules:

658.....46545

24 CFR

570.....45760
888.....45547

Proposed Rules:

24.....46072

25 CFR

71.....45103

Proposed Rules:

140.....45789

26 CFR

1.....45761, 46272, 46296
4.....46272
31.....46296
35a.....45362

27 CFR

4.....45549
5.....45549, 46518
7.....45549
9.....45238, 45239, 46518–46524
170.....46526
240.....46526

Proposed Rules:

9.....46387

29 CFR

1601.....46298

Proposed Rules:

1908.....45411
1910.....45956
1926.....45872

30 CFR

251.....46025
913.....46528
917.....46299
935.....46027, 46301, 46530
938.....45389
946.....46028

Proposed Rules:

55.....45336
56.....45336
57.....45336
58.....45336
935.....45420

32 CFR

251.....45242

Proposed Rules:

199.....45791

33 CFR

100.....45244, 46531
117.....45245, 46532
130.....46178
131.....46178
132.....46178
151.....45704
155.....45704
157.....45718
165.....46533, 46534

Proposed Rules:

162.....45798

34 CFR

668.....45670
690.....45670

Proposed Rules:

350.....45568
351.....45568
352.....45568
353.....45568
354.....45568
355.....45568
357.....45568

36 CFR

60.....46306

Proposed Rules:

216.....45421

37 CFR

Proposed Rules:

1.....45424
2.....45424

38 CFR

Proposed Rules:

21.....45123, 45268, 45572

39 CFR

111.....45761, 46031

Proposed Rules:

111.....45269
3001.....46545

40 CFR

52.....45245, 45246, 46046, 46047, 46309
60.....46535, 46536
61.....46535
81.....46537
87.....46481
180.....46310
192.....45926
433.....45105
469.....45249
717.....45765

Proposed Rules:

51.....45269, 46152
52.....46081, 46391–46393, 46548
60.....45701, 46224, 46472
81.....46082, 46085, 46393, 46549–46553
141.....45502
162.....46397
180.....45573, 46395, 46396
228.....45798
261.....45210
464.....45573
465.....45573
1502.....46554
1508.....46554

41 CFR

Ch 1.....45392, 45557
Ch. 101.....45105
9–4.....45766
9–51.....45766
101–11.....46310
105–61.....45392

Proposed Rules:

101–41.....46554

42 CFR

51c.....45558
52b.....45558
55a.....45558
56.....45558
57.....45112
110.....45250
122.....45558
405.....45766

43 CFR

Subtitle A.....45664

Public Land Orders:

44 (Revoked by PLO 6478).....45401
98 (Revoked by PLO 6478).....45401
399 (Revoked in part by PLO 6477).....45395
698 (Revoked by PLO 6473).....45393
780 (Revoked by PLO 6478).....45401
3645 (Revoked by PLO 6472).....45393
5170 (Revoked in part by PLO 6477).....45395
5179 (Revoked in part by PLO 6477).....45395
5180 (Revoked in part by PLO 6477).....45395
5184 (Revoked in part by PLO 6477).....45395
6472.....45393
6473.....45393
6474.....45394
6475.....45394
6476.....45395
6477.....45395
6478.....45401
6479.....45559
6480.....46049
6481.....46049
6482.....46050

44 CFR

67.....46050, 46312

Proposed Rules:

67.....45425, 46085

45 CFR

13.....45251

46 CFR

160.....45113
162.....45727
380.....45559
542.....46175
543.....46175
544.....46175

Proposed Rules:

Ch. IV.....45269
7.....45574
10.....46556
24.....45425
25.....45425
26.....45425
30.....45425
31.....45425
32.....45425
35.....45425
70.....45425
71.....45425
75.....45425
77.....45425
78.....45425
90.....45425
91.....45425
94.....45425

96 45425
97 45425
107 45425
108 45425
109 45425
157 46556
163 45425
188 45425
189 45425
192 45425
195 45425
196 45425
508 45800
524 45270
531 45270
536 45270
538 45272

47 CFR

0 45652
1 45652
2 45560
73 45401–45403
81 ..... 45114, 45560
83 ..... 45114, 45560
87 45114
97 45652

Proposed Rules:

67 46556
73 45428–45438
83 45439

48 CFR

Ch. I 46541

49 CFR

571 46053
1033 45257
1043 45775
1162 46542
1307 46542

Proposed Rules:

Ch. X 46399
27 46399
195 46589
218 45272
1039 45137
1155 45440

50 CFR

17 ..... 46053, 46328–46337
23 ..... 45259, 45775
611 ..... 45403, 46542
646 45404
654 46057
655 ..... 45403, 45404
656 45403
657 45403
658 46057
661 45263
672 46542
681 46342

Proposed Rules:

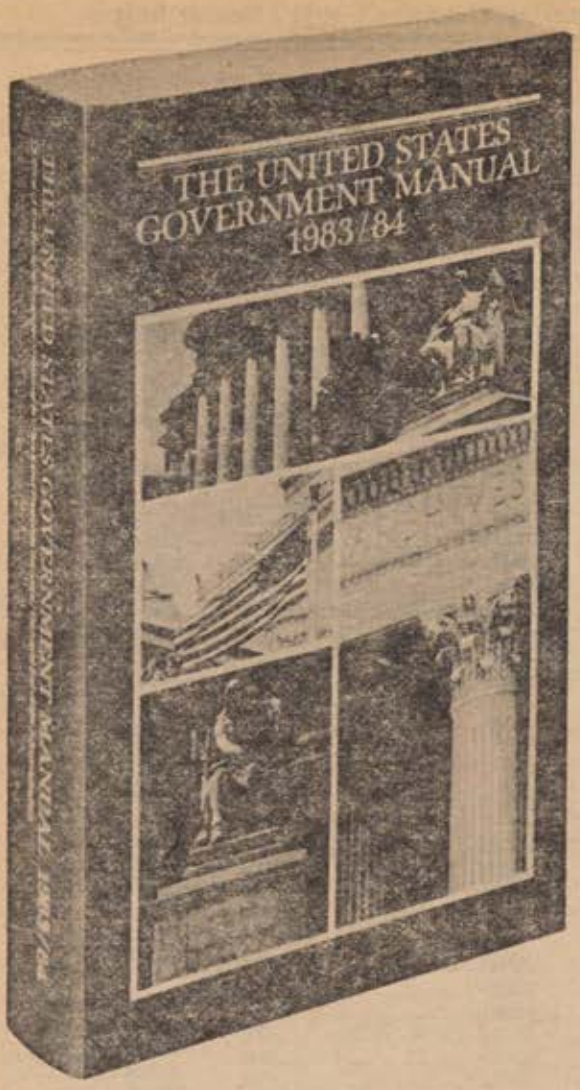
17 ..... 45574, 46086, 46590
23 45575
611 ..... 45804, 45806
663 45274

LIST OF PUBLIC LAWS

Last Listing October 11, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.J. Res. 137 / Pub. L. 98–114 Authorizing and requesting the President to issue a proclamation designating the period from October 2, 1983, through October 8, 1983, as "National Schoolbus Safety Week of 1983". (Oct. 7, 1983; 97 Stat. 256) Price: $1.50



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882